LIBRARY
SUPREME COURT U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 66

JAMES GOBER, ET AL., PETITIONERS,

vs.

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED JANUARY 31, 1962
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 66

JAMES GOBER, ET AL., PETITIONERS,

vs.

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

INDEX

	Original	Print
I		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. James Gober, No. 20780	1	1
Appeal bond	1	1
Complaint	2	2
Motion to strike	2	3
Demurrers	3	4
Motion to exclude the evidence	5	6
Judgment entry	7	9
Motion for a new trial and order overruling	9	12
Appeal bond to Court of Appeals	12	15
Transcript of evidence	13	16
Appearances	13	17
Testimony of E. K. Martin—		
direct	15	18
cross	17	19

RECORD PRESS, PLINTERS, NEW YORK, N. Y., AUGUST 1, 1962

	Original	Print
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. James Gober, No. 20780—Continued		
Transcript of evidence—Continued		
Testimony of John I. Gottlinger—		
direct	18	21
cross	22	24
redirect	25	27
recross	25	27
C. L. Pierce—		
direct	26	28
Examination on voir dire	28	30
Testimony of James Edward Gober—		
direct	30	32
cross	31	34
C. L. Pierce— (recalled)—		
direct	36	37
cross	39	41
James Albert Davis—		
direct	41	43
cross	43	45
redirect	48	50
Transcript of sentencing	50	50
Reporter's certificate (omitted in printing)	53	55
Clerk's certificate	54	55
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 797	55	56
Assignment of errors	55	56
Order of affirmance	57	57
Opinion, Harwood, J.	58	58
Application for rehearing and order overruling	66	65
Proceedings in the Supreme Court of Alabama, 6 Div. 762	67	66
Petition for certiorari	67	66
Order denying petition for writ of certiorari	72	69
Application for rehearing	73	70
Order overruling application for rehearing	74	71
Clerk's certificate (omitted in printing)	75	71

	Original	Print
Proceedings on petition for certiorari	75a	72
Clerk's certificate (omitted in printing)	76	72

II

Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. James Albert Davis, No. 20779	1	73
Appeal bond (omitted in printing)	1	73
Complaint	2	73
Motion to strike	2	74
Demurrers	3	75
Motion to exclude the evidence	5	77
Judgment entry	8	81
Motion for a new trial and order overruling	10	83
Appeal bond to Court of Appeals (omitted in printing)	12	86
Transcript of evidence (omitted in printing)	14	86
Transcript of sentencing (omitted in printing)	51	86
Reporter's and clerk's certificates (omitted in printing)	56	86
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 796	58	87
Assignment of errors	58	87
Order of affirmance	60	88
Application for rehearing and order overruling	61	89
Proceedings in the Supreme Court of Alabama, 6 Div. 761	61a	89
Proceedings on petition for certiorari (omitted in printing)	61a	89
Petition for certiorari	62	89
Order denying petition for writ of certiorari (omitted in printing)	67	92
Application for rehearing (omitted in printing)	68	92
Order overruling application for rehearing (omitted in printing)	69	92
Clerks' certificates (omitted in printing)	70	92

	Original	Print
III		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Roy Hutchinson, No. 20781	1	93
Appeal bond (omitted in printing)	1	93
Complaint	2	93
Motion to strike	2	94
Demurrers	3	95
Motion to exclude the evidence	5	97
Judgment entry	8	100
Motion for a new trial and order overruling	10	103
Appeal bond to Court of Appeals (omitted in printing)	12	105
Transcript of evidence	14	106
Appearances	14	106
Testimony of Elwood K. Martin—		
direct	16	107
cross	17	108
Carl A. Schmid—		
direct	19	109
cross	21	111
D. V. Kidd—		
direct	24	114
cross	27	117
redirect	31	120
recross	32	121
Transcript of sentencing (omitted in printing)	34	122
Reporter's and clerk's certificates (omitted in printing)	39	122
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 798	41	123
Assignment of errors	41	123
Order of affirmance	42	124
Application for rehearing and order overruling (omitted in printing)	43	124
Proceedings in the Supreme Court of Alabama, 6 Div. 754	43a	124
Proceedings on petition for certiorari (omitted in printing)	43a	124

	Original	Print
Petition for certiorari	44	125
Order denying petition for writ of certiorari (omitted in printing)	47	128
Application for rehearing (omitted in printing)	48	128
Order overruling application for rehearing (omitted in printing)	49	128
Clerks' certificates (omitted in printing)	50	128
IV		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Robert J. King, No. 20783	1	129
Appeal bond (omitted in printing)	1	129
Complaint	2	129
Motion to strike	2	130
Demurrers	3	131
Motion to exclude the evidence	5	133
Judgment entry	8	136
Motion for a new trial and order overruling	10	139
Appeal bond to Court of Appeals (omitted in printing)	12	141
Transcript of evidence (omitted in printing)	14	142
Transcript of sentencing (omitted in printing)	34	142
Reporter's and clerk's certificates (omitted in printing)	39	142
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 799	41	142
Assignment of errors	41	142
Order of affirmance	42	144
Application for rehearing and order overruling	43	144
Proceedings in the Supreme Court of Alabama, 6 Div. 757	43a	144
Proceedings on petition for certiorari (omitted in printing)	43a	144
Petition for certiorari (omitted in printing)	44	144
Order denying petition for writ of certiorari (omitted in printing)	48	144
Application for rehearing (omitted in printing)	49	144
Order overruling application for rehearing (omitted in printing)	50	144
Clerks' certificates (omitted in printing)	51	144

	Original	Print
V		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Robert L. Parker, Jr., No. 20784	1	145
Appeal bond (omitted in printing)	1	145
Complaint	2	145
Motion to strike	2	146
Demurrers	3	147
Motion to exclude the evidence	5	148
Judgment entry	8	152
Motion for a new trial and order overruling	10	154
Appeal bond to Court of Appeals (omitted in printing)	12	157
Transcript of evidence	14	157
Appearances	14	157
Testimony of B. R. Myers—		
direct	16	158
cross	17	159
Mrs. L. B. Gibbs—		
direct	20	162
cross	21	163
Lloyd L. Stallings—		
direct	22	164
cross	23	165
redirect	27	168
recross	27	169
William West—		
direct	28	170
cross	32	173
Transcript of sentencing (omitted in printing)	36	176
Reporter's and clerk's certificates (omitted in printing)	41	176
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 800	43	177
Assignment of errors	43	177
Order of affirmance	45	178
Application for rehearing and order overruling (omitted in printing)	46	178

	Original	Print
Proceedings in the Supreme Court of Alabama, 6 Div. 756	46a	178
Proceedings on petitions for certiorari (omitted in printing)	46a	178
Petition for certiorari	47	179
Order denying petition for writ of certiorari (omitted in printing)	50	182
Application for rehearing (omitted in printing)	51	182
Order overruling application for rehearing (omitted in printing)	52	182
Clerks' certificates (omitted in printing)	53	182
VI		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. William West, No. 20791	1	183
Appeal bond (omitted in printing)	1	183
Complaint	2	183
Motion to strike	2	184
Demurrers	3	185
Judgment entry	5	187
Motion for a new trial and order overruling	7	189
Appeal bond to Court of Appeals (omitted in printing)	9	192
Transcript of evidence (omitted in printing)	11	192
Transcript of sentencing (omitted in printing)	33	192
Reporter's and clerk's certificates (omitted in printing)	38	192
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 804	40	192
Assignment of errors	40	192
Order of affirmance	41	194
Application for rehearing and order overruling (omitted in printing)	42	194
Proceedings in the Supreme Court of Alabama, 6 Div. 758	42a	194
Proceedings on petition for certiorari (omitted in printing)	42a	194
Petition for certiorari (omitted in printing)	43	194
Order denying petition for writ of certiorari (omitted in printing)	46	194

	Original	Print
Application for rehearing (omitted in printing)	47	194
Order overruling application for rehearing (omitted in printing)	48	194
Clerks' certificates (omitted in printing)	49	194

VII

Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v Robert D. Sanders, No. 20787	1	195
Appeal bond (omitted in printing)	1	195
Complaint	2	195
Motion to strike	2	196
Demurrers	3	197
Motion to exclude the evidence	5	199
Judgment entry	8	202
Motion for a new trial and order overruling	10	205
Appeal bond to Court of Appeals (omitted in printing)	12	207
Transcript of evidence	14	208
Appearances	14	208
Testimony of J. P. Caldwell—		
direct	16	208
cross	17	210
Albert J. Pearson—		
direct	18	210
cross	20	213
Transcript of sentencing (omitted in printing)	28	218
Reporter's and clerk's certificates (omitted in printing)	33	218
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 801	35	219
Assignment of errors	35	219
Order of affirmance	36	220
Application for rehearing and order overruling (omitted in printing)	37	220
Proceedings in the Supreme Court of Alabama, 6 Div. 755	37a	220
Proceedings on petition for certiorari (omitted in printing)	37a	220

	Original	Print
Petition for certiorari	38	221
Order denying petition for writ of certiorari (omitted in printing)	42	224
Application for rehearing (omitted in printing)	43	224
Order overruling application for rehearing (omitted in printing)	44	224
Clerks' certificates (omitted in printing)	45	224
VIII		
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Roosevelt Westmoreland, No. 20792	1	225
Appeal bond (omitted in printing)	1	225
Complaint	2	225
Motion to strike	2	226
Demurrers	3	227
Judgment entry	5	229
Motion for a new trial and order overruling	7	231
Appeal bond to Court of Appeals (omitted in printing)	9	234
Transcript of evidence (omitted in printing)	11	234
Transcript of sentencing (omitted in printing)	25	234
Reporter's and clerk's certificates (omitted in printing)	30	234
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 805	32	234
Assignment of errors	32	234
Order of affirmance	33	236
Application for rehearing and order overruling (omitted in printing)	34	236
Proceedings in the Supreme Court of Alabama, 6 Div. 753	34a	236
Proceedings on petition for certiorari (omitted in printing)	34a	236
Petition for certiorari (omitted in printing)	35	236
Order denying petition for writ of certiorari (omitted in printing)	38	236
Application for rehearing (omitted in printing)	39	236
Order overruling application for rehearing (omitted in printing)	40	236
Clerk's certificates (omitted in printing)	41	236

IX

	Original	Print
Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Jessie Walker, No. 20790	1	237
Appeal bond (omitted in printing)	1	237
Complaint	2	237
Motion to strike	2	238
Demurrers	3	239
Motion to exclude the evidence	5	241
Judgment entry	8	244
Motion for a new trial and order overruling	10	247
Appeal bond to Court of Appeals (omitted in printing)	12	249
Transcript of evidence	14	250
Appearances	14	250
Testimony of Richard C. Casey—		
direct	16	251
cross	17	252
Jesse H Walker—		
direct	20	255
cross	23	258
Transcript of sentencing (omitted in printing)	28	261
Reporter's and clerk's certificates (omitted in printing)	33	261
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 803	35	261
Assignment of errors	35	261
Order of affirmance	36	262
Application for rehearing and order overruling (omitted in printing)	37	263
Proceedings in the Supreme Court of Alabama, 6 Div. 759	37a	263
Proceedings on petition for certiorari (omitted in printing)	37a	263
Petition for certiorari	38	263
Order denying petition for writ of certiorari (omitted in printing)	43	266
Application for rehearing (omitted in printing)	44	266

	Original	Print
Order overruling application for rehearing (omitted in printing)	45	266
Clerks' certificates (omitted in printing)	46	266

X

Record from the Circuit Court of the Tenth Judicial Circuit of Alabama in and for Jefferson County in the case of The City of Birmingham v. Willie J. Willis, No. 20793	1	267
Appeal bond (omitted in printing)	1	267
Complaint	2	267
Motion to strike	2	268
Demurrers	3	269
Judgment entry	5	271
Motion for a new trial and order overruling	7	273
Appeal bond to Court of Appeals (omitted in printing)	9	276
Transcript of evidence (omitted in printing)	11	276
Transcript of sentencing (omitted in printing)	25	276
Reporter's and clerk's certificates (omitted in printing)	30	276
Proceedings in the Court of Appeals of the State of Alabama, Judicial Department, 6 Div. 806	32	276
Assignment of errors	32	276
Order of affirmance	33	278
Application for rehearing and order overruling (omitted in printing)	34	278
Proceedings in the Supreme Court of Alabama, 6 Div. 760	34a	278
Proceedings on petition for certiorari (omitted in printing)	34a	278
Petition for certiorari (omitted in printing)	35	278
Order denying petition for certiorari (omitted in printing)	39	278
Application for rehearing (omitted in printing)	40	278
Order overruling application for rehearing (omitted in printing)	41	278
Clerks' certificates (omitted in printing)	42	278
Order allowing certiorari	44	279
Stipulation as to printing of the record	45	279

[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN AND FOR JEFFERSON COUNTY

No. 20780

THE CITY OF BIRMINGHAM,

vs.

JAMES GOBER.

APPEAL BOND—Filed May 4, 1960

The State of Alabama)
) City of Birmingham
Jefferson County)

We, James Gober, principal and Jas Esdale sureties, acknowledge ourselves indebted to the City of Birmingham, a municipal corporation, in the sum of Three Hundred Dollars, for the payment of which, well and truly to be made, we bind ourselves, our administrators, and executors. But the condition of the above obligation is such, that whereas the above bounden principal was tried and convicted on the charge of

Count 1. Trespass After Warning Sec 1436 GCC and has prayed and obtained an appeal to the Circuit Court of Jefferson County, Alabama, from the judgment of the Recorder's Court of the City of Birmingham, adjudging him to pay a fine of One Hundred no/100 Dollars, Costs Five Dollars; and to perform hard labor for 180 Days rendered the 4 day of April 1960.

Now, if the said principal shall appear at present Term of the Circuit Court of Jefferson County, Alabama, and from term to term thereafter until discharged by law, then this obligation to be void, otherwise to remain in full force and effect. And as against this obligation we waive all

right under the laws of Alabama to claim any personal property as exempt from levy and sale.

Witness out hand and seals this 4th day of April, 1960.

James Gober (L.S.), 226 Johnson St., Jas Esdale (L.S.), 809 No 21st., By Lacey Alexander (L.S.), Atty In fact.

Approved 4 day of April, 1960.

William Conway, Recorder of the City of Birmingham.

COUNSEL'S NOTE RE RECORD

The appeal bond in the Circuit Court printed in the *Gober* case is identical to the appeal bonds in the cases of the other 9 petitioners except for the names and addresses of the petitioners involved.

[fol. 2] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20780

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JAMES GOBER, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that James Gober, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and

dining purposes and located within the building commonly and customarily known as Pizitz Department Store, located at 1821 2nd Avenue, North, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20780

CITY OF BIRMINGHAM,

vs.

JAMES GOBER.

MOTION TO STRIKE—Filed October 10, 1960

Comes now James Gober, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Four-
[fol. 3] teenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20780

CITY OF BIRMINGHAM,

vs.

JAMES GOBER.

DEMURRERS—Filed October 10, 1960

Comes now James Gober, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecu-
[fol. 4] tion of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend..

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, in (sic) unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation

of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20780

CITY OF BIRMINGHAM, Plaintiff,

versus

JAMES GOBER, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Pizitz, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Pizitz Cafe because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Pizitz, an establishment performing an economic function, invested with the public interest; that defendant peacefully was attempting to obtain service in the facilities of Pizitz in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Bir-
[fol. 6] mingham, Alabama to permit defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Pizitz, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in fur-

therance of this racially discriminatory practice of Pizitz, defendant was arrested on the basis of race or color, under color of law, to enforce Pizitz's racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the [fol. 7] complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: Pizitz and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Pizitz, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Pizitz, open to the public, which was denied to him solely because of race or color; that Pizitz, was and is offering, for a price, to serve all members of the public with food; that this public facility Pizitz, is, along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if Pizitz and other like facilities were all to withdraw said service; that having determined to offer said valuable service to the public, Pizitz is required to provide such service in the manner of state operated facilities of a like nature, to-wit: That Pizitz may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, Oscar W. Adams, Jr., J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Baines, Judge Presiding

CITY OF BIRMINGHAM,

vs.

JAMES GOBER.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came

the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon [fol. 8] said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said James Gober, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said James Gober, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-eight and 75/100 ($48.75) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-four and 75/100 ($44.75) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty days, at the rate of 75 cents per day to pay said costs. It is further ordered by the Court that [fol. 9] after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20780

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JAMES GOPER, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause, and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following, separately and severally:

1. That the Judgment of the Court in said cause is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the [fol. 10] law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the Judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

11. The Court erred in overruling defendant's demurrers filed in this cause.

12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgment of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth [fol. 14] Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this case.

17. That it appeared from the evidence that no owner of the premises involved, had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant for trespass on private property.

20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in the store.

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

[fol. 12]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

APPEAL BOND TO COURT OF APPEALS

Filed October 11, 1960

The State of Alabama)
)
Jefferson County)

Know All Men By These Presents, That we James Gober principal, and James Esdale & Willie Esdale as sureties, are held and firmly bound unto the State of Alabama in the sum of Three Hundred Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemption under the Constitution and laws of the State of Alabama as against this bond.

The Condition of the Above Obligation Is Such, That whereas; the above bounden James Gober was on the day of Oct 11 1960, convicted in the Circuit Court of Jefferson County, Alabama, for the offense of Trespassing After Warning and had assessed against him a fine of One Hundred Dollars, together with the cost of this prosecution, and on the 11 day of October, 1960, on failure to pay fine was sentenced to perform hard labor for the County for ..... days, and an additional term for the cost, at the rate of seventy-five cents per day, and as additional punishment imposed the defendant was sentenced to perform hard labor for the County for 30 days, from which sentence the said ..... has this day prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, if the Said James Gober shall appear and abide such judgment as may be rendered by the Court of Appeals, and if the judgment of conviction is affirmed, or the appeal is dismissed, the said James Gober shall surrender himself to the Sheriff of Jefferson County, at the County Jail, within fifteen days from the date of such affirmation or

dismissal, then this obligation to be null and void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 11 day of Oct. 1960.

James Gober (L.S.), James Esdale (L.S.), Willie Esdale (L.S.), By A. E. Brooks (L.S.) Atty In Fact.

Approved: Julian Swift, Clerk of the Circuit Court of Jefferson County.

[File endorsement omitted]

COUNSEL'S NOTE RE RECORD

The appeal bond to the Alabama Court of Appeals, printed in the *Gober* case, is identical to the appeal bonds in the cases of the other 9 petitioners except for the names and addresses of the petitioners.

[fol. 13]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
IN AND FOR JEFFERSON COUNTY

No. 20780

CITY OF BIRMINGHAM,

versus

JAMES GOBER.

Transcript of Evidence—October 10, 1960

Birmingham, Alabama

Before: Honorable George L. Bailes, Judge.

APPEARANCES:

For the City, Mr. Watts E. Davis.

For the Defendants, Messrs. A. D. Shores, Oscar Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson.

[fol. 15]

Proceedings

The Court: Are the defendants ready?

Mr. Shores: We are ready, Your Honor.

Mr. Billingsley: Your Honor, here is a motion to strike.

The Court: Are they identical?

Mr. Billingsley: Yes, sir.

The Court: The charges are identical and the motions are identical, is that right?

Mr. Billingsley: Yes, sir.

The Court: I take it that a copy of the complaint has been served upon counsel for defendants?

Mr. Davis: Yes, Your Honor.

The Court: I take it that the motion to strike by the defendants has been served upon the Solicitor for the City?

Mr. Davis: Yes, sir.

The Court: Please let the motion to strike be overruled.

Mr. Billingsley: We take an exception, Your Honor. And next we have some demurrers we would like to file in each case.

The Court: All right, please let the demurrers be overruled.

Mr. Billingsley: We would like to take exceptions.

Mr. Davis: If the Court pleases, we would like to invoke the rule.

(Witness Placed Under the Rule)

E. K. MARTIN, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state your name?

A. E. K. Martin.

Q. Mr. Martin, by whom are you employed and in what capacity?

A. I am employed by the City of Birmingham as a Police Officer.

Q. And were you employed by the City of Birmingham [fol. 16] on March 31, 1960, sir?

A. Yes, sir, I was.

Q. Did you have occasion on the morning of March 31, of this year, to visit the Pizitz Department Store?

A. Yes, sir, I did.

Q. Is that located in the City of Birmingham?

A. Yes, sir.

Q. I believe it is at Second Avenue and 19th Street, North?

A. Yes, sir.

Q. At about what time did you visit the store, Mr. Martin?

A. It was approximately 10:50.

Q. Had you had a report of any disturbance or a commotion there at the store?

A. Yes, sir, we had.

Q. You went there in the performance of official duty then?

A. Yes, sir.

Q. Did you have occasion to go to the Cafeteria or the eating or dining area there at Pizitz?

A. Yes, sir, I did.

Q. When you got to the dining or eating area what did you find that was unusual or out of the ordinary?

A. Well, I found that the cafeteria part was closed to all customers and I found two Negro males sitting in the eating part of the cafeteria.

Q. Do you know the name of the two Negroes that were there?

A. James Davis and James Gober.

Q. Do you see them in the Courtroom?

A. Yes, sir, that is them sitting behind Arthur Shores.

Q. What were they doing there, if anything, Officer Martin?

A. They were sitting there just talking to one another.

Q. Did anyone say anything to either of these two defendants in your presence or hearing there on that occasion?

A. No, sir, they did not.

Q. Did you place them under arrest?

[fol. 17] A. Yes, sir.

Q. Did you talk with any of the personnel of the Pizitz Store there in their presence or hearing that morning?

A. Not in their presence or hearing I did not, no, sir.

Q. I believe you testified here, did you, that you put them under arrest?

A. Yes, sir.

Mr. Davis: I believe that is all.

Cross examination.

By Mr. Shores:

Q. Officer, I believe you said you were informed or you received a report that there was a disturbance at Pizitz?

A. Yes, I did.

Q. Are you a patrolman or were you at headquarters or in a squad car?

A. No, I am in the Traffic Department and I was working the corner of Second Avenue and 19th Street.

Q. Who made this report to you?

A. It came from a superior officer.

Q. Was the superior officer there at Pizitz?

A. Yes, he was.

Q. Was he, where were you stationed when you received this report?

A. I was stationed at Second and 19th.

Q. You were not in Pizitz when you received the report?

A. No, I was not.

Q. How did you receive the report?

A. I received it by mouth from a superior officer.

Q. He just came by and told you that there was a disturbance at Pizitz?

A. That is correct.

Q. And did he request you to go and check on the disturbance?

A. He ordered me to do so.

Q. Did any individual connected with the store request [fol. 18] you to do anything after you got there?

A. They didn't request me personally. They were talking to superior officers and none of them requested me to do anything.

Q. Who requested you to make these arrests?

A. My immediate superior officer.

Q. What is your superior officer's name?

A. Sergeant Dan Purvis.

Q. Did you observe any disturbance going on?

A. I noticed James Gober and James Davis sitting there at the lunch counter in a booth.

Q. I believe you stated they were just talking to each other.

A. That is correct.

Q. Did you approach them and place them under arrest?

A. Not immediately I did not. I remained at the cashier's cage you might say until I was ordered to go back and do so.

Q. You were ordered by your superior officer?

A. That is correct.

Q. What charge did you place against the defendants?

A. Trespassing after warning.

Q. Did you warn them?

A. Did I warn them?

Q. Yes.

A. No, I did not.

Mr. Shores: That is all.

Mr. Davis: That is all, Mr. Martin.

(Witness excused)

Mr. Davis: Mr. Gottlinger.

JOHN I. GOTTLINGER, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. State your full name?

A. John I. Gottlinger.

Q. Mr. Gottlinger, by whom and in what capacity are you employed?

[fol. 19] A. I am employed by Pizitz. I am Controller of the store.

Q. On March 31, 1960, about 10 or 10:30 in the morning did you have occasion to observe two Negro boys seated in the lunch area or the eating area at Pizitz store?

A. Yes, sir.

Q. Did you have any conversation or make any statements or remarks to either of these two boys?

A. I didn't make any remarks to them.

Q. Did you hear any remarks or statements made by either of the defendants?

A. Yes, sir.

Q. What were those remarks or statements?

A. They were told that they could not be served in that area.

Mr. Hall: If Your Honor pleases we object. It is not responsive. The question was any remarks or statement made by the defendants.

The Witness: I am sorry I misunderstood him.

Q. Did you hear any remarks made or statements made by either of the defendants Davis or Gober?

A. One of them, a statement to the effect that we should call the police.

Q. Did anyone in your presence and hearing tell them they would have to leave the store, they couldn't be served or words to that effect?

Mr. Shores: I object to that, purely hearsay as to what someone told him unless he can connect it up properly.

The Court: Read the question.

(Question read)

The Court: I overrule the objection.

Mr. Hall: Judge, we would like to object further whether anyone, unless it is shown that anyone had the authority to tell them that. It might have been a customer.

Mr. Davis: I will amend that question.

The Court: I think that is correct.

Q. Did an employee of Pizitz Store have any conversa [fol. 20] tion in your presence?

A. Yes, sir.

Q. With the two defendants?

A. Pardon?

Q. With the two defendants?

A. Yes, sir.

Q. What was that conversation?

A. They were asked—

Mr. Hall: If Your Honor pleases, we would like to object to the question unless it is shown who the employee might be and whether they had some authority to say what was said or unless it is shown what the conversation was. Otherwise, I think it is irrelevant and immaterial and we object to it without a showing that any employee who might have said anything to these defendants in Mr. Gottlinger's presence was an employee with some authority to say something pertinent to the issues involved here and what was said was pertinent to the issues involved. Otherwise it is irrelevant and immaterial.

The Court: Did the person who spoke to the two defendants work for the store?

The Witness: Yes, sir.

The Court: And were they authorized to serve or not serve the people in that part of the store?

The Witness: Well the employee was not a waiter or waitress in the restaurant.

Mr. Davis: If the Court pleases, could I interject another question at this point.

Q. The person or persons that you heard have a conversation with the two defendants was this person an employee of the store and was the conversation with reference to

whether or not they would receive service or whether or not they might or might not have to leave the premises or the area?

Mr. Hall: If Your Honor pleases, we object to any answer to that question unless it can be shown that who-
[fol. 21] ever this person was, whether or not he was an employee of this store had the right to speak for Pizitz on whatever the issues are involved here and if whatever was said is pertinent to the issues. As I understand it, Pizitz is a department store with employees of any number of departments and employees in one department have absolutely no authority over other employees. You have some lease departments, don't you?

The Witness: Yes, sir.

Mr. Hall: So just an employee of Pizitz would not have the authority to speak or to say anything in another department necessarily.

Mr. Davis: I withdraw the question.

Q. Who did you observe having a conversation on this occasion with the two defendants?

A. Dick Pizitz.

Q. I beg your pardon?

A. Dick Pizitz.

Q. Dick Pizitz.

A. Yes.

Q. What is his affiliation with the company?

A. He is Assistant to the President.

Q. Assistant to the President?

A. Yes, sir.

Q. What statement, if any, did he make to either or both the defendants?

A. He asked the defendants to leave the tea room area, told them that they could be served in the Negro restaurant in the basement.

Q. And I believe I understand you to say that you made no statement whatever to them?

A. No, sir.

Q. That is all—one other question—did they leave when Mr. Pizitz asked them to leave?

A. No, sir.

Q. And do you know whether both remained there until [fol. 22] the officers arrived?

A. They remained until the officers came.

Cross examination.

By Mr. Hall:

Q. Did Mr. Pizitz simply ask them to leave the tea room area and tell them they might be served in the basement or did he order them—

A. He told them that they couldn't be served there and we had facilities in the basement to serve them.

Q. Did he tell them—

A. He told them it would be against the law to serve them there.

Q. He told them it would be against the law to serve them there. What law did he have in mind, do you know?

A. I don't know.

Q. He didn't say it was against Pizitz policy to serve them there?

A. He used the term "we cannot serve you here."

Q. And you assume that he meant it was against the law?

A. I assumed that.

Q. Is that because you know that there is a law of the City of Birmingham requiring separate facilities?

Mr. Davis: We object to that, calls for a conclusion.

The Court: I would leave it out.

Q. Do you know of your own knowledge that there is such a regulation of the City of Birmingham?

Mr. Davis: We object to that, if the Court pleases.

The Court: Would any witnesses knowledge of the law be material?

Mr. Hall: Possibly, Your Honor. It is our theory of this case it is one based simply on the City's segregation ordinance and Mr. Gottlinger, Mr. Pizitz, the police officers and everybody involved acted simply because of the segregation law and not because it was Pizitz policy.

[fol. 23] The Court: Aren't we dealing with laws instead of policies?

Mr. Hall: As I understand it it is the theory of the City's case, it is trespass after warning. Our contention is that that is not a fact at all, it is simply an attempt to enforce the segregation ordinance and we are attempting to bring it out.

The Court: Does the complaint cite some statute?

Mr. Hall: Trespass after warning. If we went only on the complaint it would seem that some private property has been abused by these defendants and that the owner of this property has instituted this prosecution. From the witness' answers it doesn't seem to be the case. It seems it is predicated on the segregation ordinance of the City of Birmingham rather than on the trespass. So what we are trying to bring out is whether or not the acts of Pizitz were based on the segregation ordinance or something that has to do with trespass on the property.

The Court: The action of Pizitz is not material as I conceive it.

Mr. Hall: Our theory of the case, we assume that Pizitz action was very material and any justification these men have would be based on their right.

The Court: I didn't mean factually, I meant as a matter of policy. I heard you use the word policy, Mr. Pizitz policy would not be material as I conceive this.

Mr. Hall: If Your Honor pleases, may I say this. We are not arguing with the Court. What I say unless Mr. Pizitz had ordered these men out of the restaurant facilities they would not have been arrested and could not have been prosecuted under the statute.

The Court: Is there any divergence between you and the City on that theory?

Mr. Hall: I don't know, sir.

The Court: Unless they had failed to comply with some trespass, some warning after trespass. Isn't that what it is?

Mr. Hall: I suppose so.

The Court: Is that the issue. Is that the thing which is [fol. 24] germane?

Mr. Hall: It certainly is, Your Honor.

Mr. Davis: I want to object to the references to the segregation ordinance. This ordinance has nothing to do with the matter of segregation and applies to anybody on the premises of another who is asked to leave and refuses. Segregation is not mentioned in the ordinance.

The Court: Wouldn't it apply equally to everybody. I overrule the objection.

Mr. Hall: Did you say you overruled the objection and may I continue?

The Court: Yes.

Q. Are you aware of the ordinance?

A. I have heard of it.

Mr. Davis: I am not sure I understand. He is to testify as to what the ordinance is?

The Court: I don't believe the witness' knowledge of the law involved is competent.

Mr. Hall: Well we withdraw that question.

Q. Did you or any official at Pizitz call the police?

A. No, sir.

Q. Did you subsequently make a complain to the Police Department?

A. I was called, a policeman came up to me and asked me if I had witnessed the affair and I don't know if I was complaining or what, He asked me my name and who witnessed it and I was the one.

Q. So you didn't call him, he called you?

A. He didn't call me. He came in there.

Q. Called you and asked you if you saw it?

A. Yes, sir.

Q. At this time had the defendant been put under arrest?

A. What was the question?

Q. At this time had the two young Negro boys been arrested?

A. Yes, sir.

Q. They had already been arrested?

[fol. 25] A. I don't know. They were taking them out of the restaurant.

Q. That was before the policeman talked to you about whether or not you witnessed it?

A. Yes.

Q. So far as you know no official at Pizitz had filed a complaint with the Police Department at that time?

A. That is right.

Mr. Hall: Thank you.

Redirect examination.

By Mr. Davis:

Q. Mr. Gottlinger, do you have any knowledge on the subject of whether anyone else called the police in this case?

A. No, I don't know.

Q. Can you say as a fact you know no official at Pizitz called the police?

A. I could say it is a fact to my knowledge no official at Pizitz called the police.

Q. You would not say they did not?

A. I couldn't say they did not.

Mr. Davis: That is all.

Recross examination.

By Mr. Hall:

Q. One other question. Have you since learned that any official at Pizitz did make such a complaint?

A: No, I haven't.

Mr. Hall: Thank you.

Mr. Davis: Mr. Pierce.

The Court: Is that all for Mr. Gottlinger?

Mr. Davis: Yes, sir. May he be excused?

The Court: Yes, you may be excused.

(Witness excused.)

[fol. 26] C. L. PIERCE, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Are you Detective C. L. Pierce?
A. Yes, sir.
Q. Are you with the City of Birmingham?
A. Yes, sir.
Q. Were you with the City of Birmingham on April 1, 1960?
A. Yes, I was.
Q. I will ask you if on April 1, 1960 you had occasion to talk with either or both the following, James Gober, James Albert Davis?
A. I did, yes, sir.
Q. Where did that conversation take place?
A. At the City Hall.
Q. Was that about ten or 10:20 in the morning of that day?
A. It was.
Q. Was James Albert Davis' father present on that occasion?
A. He was.
Q. Is he a Minister here in the City?
A. He is.
Q. I will ask you if on that occasion you asked James Albert Davis if he was arrested in company with anyone else on March 31, 1960 and if he answered yes, James Gober.
A. That is right.
Q. I will ask you if you asked him if he was a student, that is asked James if he was a student at Daniel Payne College and he answered yes, sir. I will ask you if you asked him?
A. That is right.
Q. I will ask you if you asked him if they had had a meeting at the home of Reverend Shuttlesworth?

Mr. Shores: Your Honor, we want to object to that line of questioning. He is asking about a conversation he had

with the defendant on April 1, and this incident occurred on March 31. He is not asking any questions with respect to trespass.

[fol. 27] The Court: Would it be the day following?

Mr. Davis: The day following, they had a discussion with the defendant about what took place, if the Court pleases, on the prior day, and what arrangements they had made. It all sheds light on what took place leading up to the sequence of events regarding the corpus delicti.

The Court: I assume anything Officer Pierce said to James Albert or to James Gober and that they said to him on the day following the arrest might be in close enough proximity to be competent.

Mr. Hall: If Your Honor pleases, if what Detective Pierce is about to testify to is in the nature of some confession or something else we would like to examine the detective on Voir Dire before it comes in. We don't know what he is going to talk about and we don't know whether it is admissible.

Mr. Davis: He is perfectly entitled to that. I neglected to lay a predicate. I will be happy to do it.

Q. On the occasion of this statement which James Gober and James Albert Davis made in your presence and in the presence of James Albert Davis' father at the City Hall on April 1, 1960 was there any threat of bodily harm if they did make a statement or did not make a statement or any promise of reward or hope of reward if they did so. Were they told it would be better if they did or worse for them if they did not make a statement on that occasion?

A. No, sir.

Q. On this occasion did James Albert Davis or James Gober tell you that they had a meeting prior to their going to Pizitz?

Mr. Hall: If Your Honor pleases, we object. We haven't established that this is admissible yet. Counsel has asked if there was any threats. I didn't hear Mr. Pierce's answer.

Mr. Davis: He said there was not.

Mr. Hall: We would like to go further and offer something in refutation.

[fol. 28] Examination on voir dire.

By Mr. Hall:

Q. Detective Pierce, you had placed them under arrest?
A. They were under arrest. I hadn't arrested them.
Q. Had they been allowed bond or bail at that time?
A. No, I don't think they had.
Q. Isn't it a fact that arrangements had been made to bond them out but they were not released, had not been released at that time?
A. I can't say that. I can't answer that.
Q. They were not at the City Jail but at the City Hall?
A. That is right.
Q. They had been in jail overnight, is that true?
A. They had.
Q. And you are not aware, you don't know whether a bonding company or official of a bonding company had been attempting to bail them out for the past twelve hours' prior to that time?
A. I couldn't say.
Q. Did you tell them that they were seriously involved in some infraction of the law and cooperation with the City was necessary for them to get free, to be able to get free and go back to school?
A. No, I didn't. Reverend Davis had talked to them.
Q. You hadn't done that yourself?
A. He talked to them. What he said I don't know.
Q. Had you talked to Reverend Davis and told him they were seriously involved?
A. I stated to him what they were charged with and I told him I would like for them to tell me the truth about what happened.
Q. At this time did they have a lawyer present?
A. Not at the time they made the statements.
Q. They didn't have a lawyer present at all?
A. No.

Mr. Hall: If Your Honor pleases, I would like to put one of the defendants on the stand for the purpose of [fol. 29] putting in a little rebuttal testimony with refer-

ence to the voluntariness of whatever they may have said before it is admitted.

The Court: Any objection on the part of the City?

Mr. Davis: I think there is a proper place for that and not on Voir Dire. I think he should put his witnesses on the stand at the proper time. We have this witness to testify as to what the facts are.

Mr. Hall: If Your Honor please, in this instance the Voir Dire is to decide whether or not this confession can come to the Court or Jury, if we had one. Once what is alleged to have been said is given to the Court or Jury it would make no difference later on if we showed it was voluntary or involuntary. As I understand the purpose the Voir Dire is to be done out of the presence of the Jury if you have one, the testimony for and against is put at that time before the Court in order to ascertain whether or not whatever is alleged to have been said was voluntary. Most of the Alabama cases where there has been a refusal to allow a defendant to testify on that one point and that one point only has been cited as error, rather than offer the defendant generally and subject him to general cross-examination. So the only thing we are attempting to ascertain now as I understand it, I don't know what he is going to bring out here but whatever the nature of the confession is we want to know whether it was done under duress, whether or not there was any promise. The detective says there was not. We want the defendants to say whether or not there were any promises or threats, and the Court can decide whether or not whatever they said was voluntary or involuntary.

Mr. Davis: We withdraw any objection if he wants to take them now.

The Court: Do you want to finish with the Captain first?

Mr. Davis: Whatever he wants is agreeable with the City.

(Witness temporarily withdrawn.)

[fol. 30] JAMES EDWARD GOBER, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hall:

Q. What is your name?
A. James Edward Gober.
Q. Are you a defendant in this case?
A. Yes, sir.
Q. Did you on April 1, last talk to Detective C. L. Pierce you see sitting there?
A. Yes, sir.
Q. Before talking with him what had occurred, that is what happened on March 31. Will you tell us what happened on that date?
A. I was arrested on the 31st and taken from the jail and taken to the City Hall.
Q. You were taken to the jail March 31, what time?
A. I can't exactly tell.
Q. Was it in the morning?
A. In the morning.
Q. In the morning of March 31?
A. Yes, sir.
Q. Did you know of anyone at that time attempting to get you out on bail?

Mr. Davis: We object to the bail procedure.
The Court: I believe that would be incompetent.
Mr. Hall: If Your Honor pleases we take an exception to that ruling because it is our contention that the mere holding in jail unnecessarily is a form of intimidation and the cases have so held.
The Court: Let the ruling stand.
Mr. Hall: Exception.

Q. On April 1 you talked with Detective Pierce. Was that the first time?
A. That was the second time.

[fol. 31] Q. That was the second time, when was the first time?

A. It was after we had been arrested.

Mr. Davis: Will you talk a little louder.

The Witness: After we had been arrested.

Q. On the day that you were arrested?

A. Yes, sir.

Q. On that day did he threaten you?

A. No.

Q. Did he tell you anything about the seriousness of whatever offense you were alleged to have perpetrated?

A. No, not on that day.

Q. Did he make you any promise if you would tell him anything?

A. On the day of arrest, the first time I spoke to him?

Q. Yes.

A. No, he didn't.

Q. On the second occasion April 1, did he threaten you or make you any promises?

Mr. Davis: I am going to object if the Court pleases to the leading question. I think he can accomplish it without putting the words in the witnesses mouth.

The Court: Wouldn't it be better to allow the witness to say what his words were and what Officer Pierce's words were?

Q. We will rephrase the question. Will you tell the Court what did happen, what Officer Pierce said to you on April 1?

A. On April 1, we were taken in and questioned one-by-one and I think I was the first one that was in jail at the time, and he asked us to tell the truth and if we did tell the truth that we would be, if we pleaded guilty they would try to help us, they would ask the Judge to let us off. In other words, it was a promise if we pleaded guilty they would try to help us.

Mr. Hall: That is all.

Cross examination.

By Mr. Davis:

Q. What time did you arrive at jail on March 31?

[fol. 32] A. I can't exactly tell the time.

Q. Was it about lunchtime?

A. It was in the morning.

Q. And what time did you go to the City Hall?

A. The following day, the City Hall. We didn't go on the 31st at the time we were arrested.

Q. I am talking about the next day?

A. On the 1st?

Q. When you had the conversation with Mr. Pierce.

A. On the 1st of April it was in the morning also. I can't say exactly, tell the time. I believe it was in the morning.

Q. You know Reverend Davis, don't you?

A. Yes, sir, I do.

Q. I believe he is the father of the boy that went with you to Pizitz, isn't he?

A. Yes, sir.

Q. Didn't, hadn't you counselled with Reverend Davis, hadn't you and your cohort on this occasion, his son, discussed the matter with Reverend Davis?

A. Us two individuals?

Q. You and Davis?

A. Us two individuals, no.

Q. You had not seen him prior to the time you went to the City Hall on the second day?

A. I didn't see him until we were released.

Q. Do I understand you to say you talked to Mr. Pierce one-by-one on the first day of April?

A. Yes, I was taken first and then the others. I think the others, I don't know whether they were together there but I was by myself talking to Mr. Pierce.

Q. Who was present in the room?

A. Reverend Davis and another detective, I think, I assume he was a detective.

Q. Reverend Davis is a colored man, isn't he?

A. Yes, sir.

[fol. 33] Q. Now you say that Detective Pierce said if you pleaded guilty he would try to help you.

A. He said they would try to help us.

Q. Who is they?

A. I don't know. He used the word they. In other words we, he said we will try to help you.

Q. Did he say he could get you off on this thing?

A. He just said he would ask the Judge.

Q. What did he say he would ask the Judge to do?

A. In other words, he said he would ask the Judge, in other words drop the case if we would plead guilty.

Q. Did he use those words, "Drop the case?"

A. No, sir, the exact words I can't tell you. But, in my words that is how I took it.

Q. Now what did Reverend Davis say to you on that occasion?

A. Reverend Davis I don't think he said anything. All he asked us was to tell the truth about the situation.

Q. To tell the truth about the situation and what did you tell the Reverend, you were going to tell the truth?

A. I told him that I was.

Q. That is when you first came in the room, wasn't it?

A. Yes, it was.

Q. The first person you talked with was Reverend Davis?

A. At the jail.

Q. At the City Hall when you went in the room?

A. No, the first person I talked with when I went in the room was Detective Pierce.

Q. Did he walk out of the room and leave you and the Reverend in there alone for awhile?

A. No, he didn't.

Q. Where were you sitting at a table?

A. I was sitting at the door.

Q. Was there a table there?

A. I think there is several tables.

Q. You spoke to the Reverend, didn't you?

[fol. 34] A. No, not personally I didn't.

Q. He asked you to tell the truth. Was that after Mr. Pierce had talked to you?

A. No.

Q. That was before Mr. Pierce talked to you?

A. He told all of us to tell the truth.

Q. Where did all of you meet with Reverend Davis?

A. He met with us in jail.

Q. Over at the southside?

A. No, in the City Hall.

Q. Was that the morning of April 1?

A. The morning of April 1, yes, sir.

Q. Didn't he talk with you in a room together?

A. No, nine of us.

Q. Were you in a room together?

A. Yes, sir.

Q. And the nine of you and Reverend Davis sat around and had a conference?

A. I wouldn't exactly call it a conference.

Q. You sat and discussed the matter, conferred?

A. Yes, sir.

Q. He advised each one of you to tell the truth?

A. Yes, he did.

Q. It was after the meeting with the nine of you with Reverend Davis that you went in and talked to Detective Pierce?

A. Reverend Davis left afterwards, and one of the detectives came in and he said he would like to question us about it and he told me, in fact he wanted to talk to me first and he chose me first, not voluntarily. He told me to come first and I went in.

Q. Why did he want to talk to you first? Did he figure you were the most honest one in the crowd?

A. I don't know. I kind of thought of that myself.

Q. The nine of you and Reverend Davis met and then you went and talked to Detective Pierce and Reverend Davis went with you, did he not?

[fol. 35] A. He was already in there. One of them said he had already left. And five to ten minutes later they came and got us individually and after they questioned me they took me back to the cell.

Q. Who was it that later asked you to change your testimony?

A. Asked me to change it?

Q. Yes, before you come to Court?

Mr. Hall: If Your Honor pleases, we object to that question. It has not been established anybody asked him to change any testimony.

Mr. Davis: I withdraw the question.

Q. Who-all was present with you when Detective Pierce promised you in your words which you don't remember exactly that he would help you if you pleaded guilty?

A. I think Reverend Davis and the other detective was the only ones.

Q. Did he threaten to make it any worse for you if you failed to make a statement?

A. No. In other words it was up to me voluntarily to do what I wanted to do in other words.

Q. You volunteered to come clean and make a clean breast of it?

A. That is the idea he gave me, if I wanted to do it I did it, and if I didn't I didn't have to. He made the suggestion it was a promise if I pleaded guilty.

Mr. Davis: That is all. Thank you.

The Court: Thank you, James, you may go.

Mr. Hall: If Your Honor pleases it is clearly shown that there was a promise made if they would tell the truth about whatever it is Detective Pierce wanted them to tell the truth that the City of Birmingham in the person of Detective Pierce would intercede, and try to get the Judge to go easy on them and dismiss the charges. So there was a promise held out for whatever they are trying to introduce and we insist and submit to Your Honor that whatever it is was involuntary in nature and clearly inadmissible.

[fol. 36] The Court: In the light of James' language that it was left up to me I will let the officer say what James said.

Mr. Hall: We want to except to Your Honor's ruling.

C. L. Pierce, recalled as a witness, having been previously duly sworn, testified further as follows:

The Court: What they both said of course.

Direct examination (continued).

By Mr. Davis:

Q. Officer Pierce, did you at any time did you tell James Gober that you would intercede in his behalf or words to that effect or that you thought it would go easier on him if he made a clean breast of this thing and told the truth about it?

A. No.

Q. Never did at any time?

A. No.

Q. Have you at any time helped them or interceded with the Court?

A. No.

Q. Or anyone else in his behalf to help him out?

A. I let Reverend Davis sign his bond.

Q. On this occasion did Gober or Davis or either in the presence of the other tell you that they had had a meeting at Reverend Shuttlesworth's house?

Mr. Hall: If Your Honor pleases, we object to the phrasing of this question. This is direct examination and it is clearly leading.

Mr. Davis: I will rephrase the question.

Q. Did either Gober or Davis make any statement or remarks concerning a meeting held where they were in attendance prior to this demonstration, the day prior to the demonstration or the sit-ins?

A. They did.

[fol. 37] Mr. Hall: We object to that question and to that answer, Your Honor.

The Court: Leave it in.

Mr. Hall: It is immaterial. Our objection is predicated on the fact that the question and answer are both clearly immaterial. The only issue involved here is whether or not this man is guilty of trespass after warning and a meeting at anybody's house at no time has any materiality.

The Court: Please leave the question and answer in the record.

Mr. Hall: We want an exception to that.

Q. Did they state or either of them state that they had received instructions as to what to do when they arrived at certain downtown stores on the demonstration?

Mr. Hall: If Your Honor pleases, we object to the question, not only to the question and the way it is phrased it is leading and suggestive and it is immaterial and irrelevant and has no bearing on this issue.

The Court: How would it do to let the officer now say what he said and what the defendant said, if anything.

Mr. Davis: That is quite all right.

Mr. Hall: Well we object to any question with reference to what meeting, what instructions any time, any place. The only issue in this case so far as this defendant is concerned is whether or not he was on the premises of Mr. Pizitz in this instance and refused to leave after warning.

The Court: Well the Court thinks, with all deference to all parties that if this officer and those two defendants had a conversation that every word either one of the three of them said at that time and place is competent and relevant. Now that is what the Court thinks. It could be wrong but I will let it be put in the record.

Mr. Hall: We want an exception, Your Honor.

Q. Did either of them on this occasion and in each other's presence tell you that the day prior to these sit-ins—

[fol. 38] Mr. Hall: If Your Honor please.

The Court: We are getting away from a repetition of the conversation. You have laid a predicate. You have put in the record in fact that the two defendants made statements to this witness and that this witness did nothing either positive or negative to cause them to make a statement. Now the next question is what did he say to them and what did they say to him? Will you tell the Court what you said to these two defendants on the occasion at the City Hall?

A. I talked to them separately. I think, my best recollection is that I talked to James Davis first. He came into the room and I asked him if he wanted to make a statement and answer my questions and tell what happened

and he said he did. And I then asked him if he had been, or where he went to school and he said he went to Daniel Payne College. And he told me that on Friday night he went from Daniel Payne College to Reverend Shuttlesworth's house and when he arrived there there were several other people there, and named other defendants in the case. He said that Reverend Billups was there, Reverend Shuttlesworth and Reverend Shuttlesworth's wife and that he was carried from Payne College to Reverend Shuttlesworth's house by either Reverend Shuttlesworth's wife or Reverend Billups—I believe he said Reverend Billups. There was two cars. On arriving there there was a sit-down demonstration which was considered or discussed at that meeting that night and volunteers were asked for and both Davis and Gober both said they volunteered to participate in the sit-down demonstration and that they were assigned stores to go to at a certain time and they said they did agree.

He stated, they both stated they were assigned and volunteered to go to Pizitz and that on the time agreed upon they did go to Pizitz and sat down at a lunch counter and that they remained there until the officers came in and arrested them, and that they made no effort and did not intend to leave until they were arrested, and that the purpose of that thing was to stay there until they were arrested. And they stated when they sat down they were [fol. 39] denied service there and asked to leave.

Q. Did they state whether or not they had instructions to do certain things after they arrived at the store or when they were to leave or anything on the subject?

Mr. Hall: If Your Honor pleases, for the record we object.

The Court: Excuse me a minute. It might be a little leading. If we could get back to the framework of having the witness say what he said and what each of the defendants said I believe we would be clearer.

Q. Did you ask either of the defendants if they had any specific instructions as to the length of time they were supposed to stay in the store?

A. Both defendants said they were supposed to stay in the store and did stay until the officers arrested them and carried them out.

Q. Did they indicate that they had any instructions as to what to do in the event they were asked to leave?

Mr. Hall: If Your Honor pleases we object to these leading questions.

Mr. Davis: I just asked if they said they had any instructions as to what to do.

The Court: Let him answer.

Mr. Hall: We except.

A. They said they were instructed to go into the store and sit down at a white lunch counter and that they would probably be or would be asked to leave and not to leave but to remain there until the police arrested them and took them out.

Mr. Davis: That is all.

Cross examination.

By Mr. Hall:

Q. Detective Pierce, they were arrested at a white lunch counter, were they not?

A. That is right I assume they were.

Q. There are colored lunch counters in the store?

A. I can't answer for that particular store. I am not sure.

Q. You don't know whether they were arrested at a [fol. 40] white lunch counter or not?

A. I didn't arrest them. So I assume they were arrested there. I don't know.

Mr. Hall: That is all. If Your Honor pleases we move to exclude all of this witness' testimony as being irrelevant, immaterial and as being absolutely outside of the issues in this case.

The Court: Overruled.

Mr. Hall: We want to take an exception, Your Honor.

The Court: Anything further from Captain Pierce? If not, you are excused, sir.

Mr. Davis: If the Court pleases the City rests.

The Court: The hour being what it is what would be the pleasure of counsel?

Mr. Adams: I have a motion to file with the Court. I would like to let the City Attorney look at this because I do not have copies and then I will file it with the Court.

Judge, this is a motion to exclude the evidence against these two defendants Gober and Davis on the ground that the City has not made out a case against them under the ordinance of the City of Birmingham for that the evidence indicates clearly that these people, these defendants were on the premises of Pizitz, that they were peacefully sitting at the so-called white lunch counter, and that the laws of the United States and Constitution do not forbid people to peacefully assemble and demonstrate to gain their rights; that the defendants were customers of Pizitz, that they had a right to enjoy the facilities of Pizitz on an equal basis with white persons; that there was no disorderly conduct involved here.

Furtherinore, looking at the face of the Statute itself there can be no violation of this Statute because on the face of the Statute it allows a person to be guilty thereof by the warning of any individual. It doesn't specify that the warning has to come from the owner or his agents operating the store. To be guilty of a criminal violation of Section 1436 of the General City Code of Birmingham [fol. 41] merely upon the warning of anybody to move or to leave certainly is the height of unconstitutionality and there is no basis upon which to figure any charge of that nature.

The contention of the defendants in this case is simply that they were rightfully on the premises, that it was a public place, Pizitz, and that they went there asking for services which Pizitz did afford to members of the public, and that the only reason they were told to leave was because of their color, and that therefore the defendants could not be guilty of violation of the City Statute, trespass after warning, for the Constitutional grounds as well as for the inadequacy of the City Ordinance itself.

Furthermore, there is no showing in this case, Your Honor, that there was any warning by any official of Pizitz Store, in his official capacity to do the particular thing it is claimed that they did do. So, therefore, we contend that there could not be a violation of the City Ordinance which is unconstitutional on its face and it is unconstitutional in its application and therefore these defendants should be discharged.

The Court: I overrule the motion to exclude the evidence.

Mr. Shores: We except, Your Honor.

James Albert Davis, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Adams:

Q. State your name and address?

A. James Albert Davis, 208 West Court, Birmingham, Alabama.

Q. What is your race?

A. Negro.

Q. Negro?

A. Yes, sir.

Q. Did you on March 31, have occasion to visit a department store in the City of Birmingham?

A. Yes, I did.

Q. What was the name of the said store?

[fol. 42] A. Pizitz.

Q. What was the nature of your business?

A. I went to shop.

Q. Did you shop?

A. Yes, I did.

Q. What did you purchase?

A. Socks and toothpaste, handkerchief.

Q. Socks and toothpaste and a handkerchief?

A. Yes, sir.

Q. At this time did you make other purchases or attempt to make other purchases in Pizitz Department Store?

A. I did attempt to make some. I attempted to go up and eat.

Q. You attempted to go up and eat?

A. That is right.

Q. Where did you go?

A. I went up on the mezzanine.

Q. Did you see any signs that said, "White and Colored?"

A. No, I didn't.

Q. When you reached the mezzanine what did you do?

A. I sat down.

Q. Were there other people sitting at this time?

A. Yes, there were.

Q. What was the race of the other people?

A. They were white.

Q. White?

A. That is right.

Q. Did you attempt to order or did you order?

A. We attempted to but we didn't.

Q. Why didn't you?

A. Well the waitresses they would not come over to us so we could order anything.

Q. Did anybody ever come over where you were sitting?

A. One man came over, yes.

[fol. 43] Q. Did he identify himself?

A. No, he didn't.

Q. He didn't identify himself at all?

A. No, he didn't.

Q. Did he tell you his capacity, his position?

A. No, he didn't tell us anything.

Q. He didn't tell you anything?

A. Nothing about his position.

Q. What did he say?

A. He told us that there was a place where Negroes could be served.

Q. That there was a place where Negroes could be served?

A. That is right.

Q. And this was at Pizitz?

A. That is right.

Q. Did he say whereabouts?

A. No, he didn't.

Q. Just downstairs?

A. Downstairs.

Q. In the same store your were at that time?

A. In the same store we were at that time, yes, sir.

Q. Let me ask you a question. You said he didn't identify himself?

A. No, he didn't.

Q. Did he ask you to leave the store?

A. No, he didn't ask me to leave the store.

Q. Did he ask you to leave where you were sitting?

A. No, he didn't ask me to leave where I was sitting. He just said they had a place downstairs where they would serve me.

Mr. Adams: That is all.

Cross examination.

By Mr. Davis:

Q. Did you ask the man that asked you to go elsewhere what his identity was or what his position with the company was?

[fol. 44] A. No, I didn't.

Q. You didn't bother to do that?

A. No, I didn't.

Q. Who told you to go to Pizitz?

A. Didn't anyone tell me to go.

Q. Well to whom did you report that you were willing and would volunteer to go to Pizitz?

A. I didn't tell anybody. I usually go to their establishment so I just figured I would go there that day for the same thing.

Q. You had a meeting and you discussed this with some—

Mr. Hall: We object to this cross-examination. It is outside of the issues brought out on direct. It has no bearing on what this witness has testified to or the issues involved in the case.

The Court: In the light of the officer's testimony about what the conversation was I think it is competent.

Mr. Hall: We take an exception.

Q. Did you have a meeting on March 30, wherein this trip and this visit was discussed?

A. Well I wouldn't exactly call it a meeting.

Q. I didn't ask you what you would call it. I said did you have a meeting?

A. No, we didn't have a meeting, no meeting.

Q. You didn't talk to anybody on that occasion in a group?

A. We talked to somebody on the occasion but it was not a meeting. We went there to be advised.

Q. How many were there in the group?

A. Well I don't exactly know.

Q. I didn't ask you exactly how many were there, but you know the names of everybody present, don't you?

A. I don't know exactly.

Mr. Hall: We object to the questions and the manner in which they are asked.

The Court: He says he doesn't know exactly how many were there.

[fol. 45] Q. Well, you recall Reverend Billups was there?

A. Yes, sir, I do.

Q. You know you were there and you know James Gober was there?

A. That is right.

Q. You know Roy Hutchison was there?

A. That is right.

Q. You know R. J. King was there?

A. Yes, sir.

Q. You know Robert L. Parker, Jr., was there?

A. Yes, sir.

Q. You know R. D. Sanders was there?

A. That is right.

Q. You know Reverend Shuttlesworth was there?

A. That is right.

Q. You know Jesse Walker was there?

A. I don't know him.

Q. You know William West was there?

A. William West, yes.

Q. You know there was a boy you didn't know from another college, Miles College?

A. Yes.

Q. You know Roosevelt Westmoreland was there?

A. Yes.

Q. You know W. J. Willis was there?

A. That is right.

Q. You know Reverend Shuttlesworth's wife was there?

A. I didn't see her.

Q. Did you all sit around and drink tea or did you have a discussion there of something you purported to do on the following day?

A. No, we talked about the demonstrations that had been going around the country. We went there to ask for advice.

Q. You went there voluntarily?

A. That is right.

Q. Nobody solicited you to come there?

[fol. 46] A. That is right.

Q. Nobody came to Daniel Payne College and asked for volunteers to go to the meeting?

A. That is right.

Q. How did you know about the meeting?

A. We went there for advice. We went to his home.

Q. Who did you go there with?

A. Reverend Billups was on the campus and I asked him to take us over there if he was going to town and he did so.

Q. Who else went with you?

A. I don't exactly remember who was in the car with me at that time.

Q. How many were in the car?

A. There was six.

Q. Six of you?

A. That is right.

Q. How did you decide to go to Reverend Shuttlesworth's house?

A. Well I have known Reverend Shuttlesworth, he is a pretty outstanding man in the City I think and I figured he should know something about it.

Q. He was waiting for you when you got there?

A. Well I wouldn't say waiting.

Q. Well he was at home?

A. He was at home, yes.

Q. All of you got together and you sat down and discussed the thing and there were others present for the discussion?

A. Well I wouldn't know about that.

Q. You heard the conversation?

A. I said I didn't know what they were there for.

Q. Did they talk about anything else except sit-ins while you were there?

A. Yes, we discussed things besides sit-ins, yes.

Q. What else?

A. About the schools and different things, different guys talking about football teams and different things.

[fol. 47] Mr. Hall: If Your Honor pleases, for the record I would like to again object. It seems that the City is more interested in the meeting and Reverend Shuttlesworth and Mrs. Shuttlesworth and Reverend Billups. I was under the impression that we are here representing defendants for trespassing on property after warning. This has no materiality at all.

Mr. Davis: For the sake of the record I would like to say for impeachment purposes this witness said they didn't have a meeting and I am trying to find out whether it was one or not.

Mr. Hall: Whether or not the City Attorney's definition of a meeting is the same as the witness' definition is immaterial. The witness said he didn't call it a meeting. But assume it was, what has that got to do with whether or not he is guilty of trespass after warning. That is all he is tried for.

The Court: Leave the record as it is.

Mr. Hall: We take an exception on the basis of the 14th Amendment.

Q. You say you purchased some items at Pizitz, socks, handkerchiefs and what else?

A. Toothpaste.

Q. Was that discussed at the gathering you had the prior day that you boys were to make certain purchases other than the purchase at the lunch counter?

A. It was not.

Q. It was not discussed?

A. No.

Q. You didn't hear anybody ask Reverend Shuttlesworth if they were supposed to buy anything else?

A. No, sir.

Q. You didn't tell Officer Pierce that that is what you were told to do?

Mr. Hall: If Your Honor pleases, we object to this question. What has that got to do with it?

Mr. Davis: If we had a little time I wouldn't mind telling counsel.

[fol. 48] Mr. Hall: If you are going to try him for trespass after warning I think you should hold the issues within that charge.

The Court: Well is there anything before the Court.

Mr. Hall: We object to the last question as to who told him to buy the toothpaste.

The Court: Leave it in.

Mr. Hall: We except.

Q. You know that we have perjury laws in Alabama, do you not?

A. Sure.

Q. I see. And you say that no one suggested or told you to buy any other articles than food.

A. No.

Q. Now you don't remember the topics they discussed, you don't remember at this time?

A. Like I said, I don't remember.

Q. You just don't have any recollection on the subject whatever it is, do you?

A. (No response)

Q. Did you go to the basement to buy food?

A. No, I didn't.

Q. What was this to be breakfast or lunch?

A. Well I would call it a snack.

Q. A snack?

A. That is right.

Mr. Davis: That is all.

Redirect examination.

By Mr. Adams:

Q. Have you ever seen the lunchroom, the lunch counter for Negroes in Pizitz Basement?

A. No, I haven't.

Q. Have you shopped in Pizitz Basement?

A. I was shopping on the first floor.

Q. Was Gober with you on this occasion?

A. Yes, he was.

Q. Did he buy any articles in the store?

[fol. 49] A. Yes, he did.

Q. Do you recall what he bought?

A. Well I think he bought some socks or something. I don't know exactly.

Q. Is the lunch counter on the mezzanine clearly visible from Pizitz first floor?

A. Yes, it is.

Q. You could see the persons there eating?

A. Yes, sir.

Q. Did you see a sign saying whether or not it was a white or colored lunch counter?

A. No.

Q. But there is a sign saying lunch counter or something to that effect?

A. That is right.

Mr. Adams: That is our case, Your Honor.

Mr. Davis: We have nothing further.

The Court: Does counsel care to argue the case?

Mr. Hall: Yes, sir.

The Court: All right, at two o'clock.

[fol. 50] TRANSCRIPT OF SENTENCING

The Court: May I ask if James Albert Davis is present?

A Voice: Yes.

The Court: James Gober. Roy Hutchinson. Robert J. King. Robert L. Parker, Jr. Robert D. Sanders. Jessie Walker.

A Voice: Here.

The Court: William West,

A Voice: Here.

The Court: Roosevelt Westmoreland and Willie J. Willis. Anyone whose name I didn't call among the students? Charles Billups.

A Voice: Here.

The Court: F. L. Shuttlesworth.

A Voice: Here.

The Court: Taking the Charge of Trespass After Warning as applied to each of the names just called, there was a slight change in the previous sentence. The Court finds the defendant and each of those called, finds the defendant guilty as charged in the complaint and fixes the punishment and fine at $100.00 and 30 days hard labor for the City. I have indicated that appeal bond will probably be filed.

Mr. Shores: Yes sir. But, Your Honor, before these appeal bonds are filed we would like for you to suspend the sentence to give us a chance to file a motion for a new trial and continue them under the same bond.

The Court: What do you say to that, Mr. Walker?

Mr. Walker: I have no objection to it. In other words, he has a right to file a motion for new trial. I have no objection to it. In other words, if they want to be free on the same bond and if that is agreeable to the Court, it is agreeable with me.

The Court: Mr. Davis, a motion was just made in each of the Trespass After Warning cases that—if you will, restate the motion, please.

Mr. Shores: That the sentence in each case be suspended and the defendants be continued under the same bond until we file and have a motion for a new trial determined.

Mr. Davis: Judge, I think we prefer things to go in their normal course.

[fol. 50a] The Court: If there is to be appeal bonds in each case, I do not see how any hardship or prejudice would result from letting it be done forthwith.

Mr. Shores: Well, Your Honor, we are in a position to file it forthwith, but, as Counsel knows, these are quasi-criminal cases and to file an appeal bond now this Court would really lose jurisdiction, and if His Honor doesn't

see fit to suspend the sentence, we would beg permission to file a motion for a new trial and let the motion be entered as filed and Your Honor can enter his ruling and give us a chance to file the motions within the next day or two and we will perfect the appeals today.

The Court: Would you mind giving the Court the benefit of your thought about any advantage or any favorable result or any profit to the defendants by doing that?

Mr. Shores: In a motion for a new trial we feel we would re-raise several points that were not really raised during the trial and indicate them as error in this motion for a new trial. In other words, if Your Honor would entertain them, we would make a motion for a new trial at this time and beg leave of the Court for time to specify the grounds for a new trial and let the record show that the motion for a new trial was filed immediately after the sentence and that the bond would be filed after—let it be shown the bond is filed after the motion for a new trial is ruled upon.

Mr. Adams: Judge, I think one of the thoughts in mind here is it is almost axiomatic for lawyers that a motion for a new trial should be filed after the sentence of the defendant, and it might be considered negligence if such a motion were not filed regardless of what the Court's decision may be on it. And we also are in this position in these cases. It is my understanding that the motion for new trial does not necessarily suspend the running of time in which the record must be on file with the Court of Appeals, and, therefore, in order to save the time in which we have to perfect the appeal and not let the time [fol. 51] just passing when the motion is before Your Honor consume the time we have to file our record on appeal; we are asking that the motion be allowed to be filed before we file the notice of appeal, and if the Court rules against us on the motion we will file immediately our appeal.

Now, in the event that the Court sees fit to want to dispose of the thing immediately, we would like to file now a motion orally after sentencing, which has been done, sentence has been given, we would file our motion orally and subsequently put it in writing, and the Judge may rule, if he is so disposed, now, as to how he feels about it. But we

think, as officers of the Court and lawyers, that a motion for a new trial certainly is consistent with good practice and may be considered error on the part of Counsel if such were not filed. That is our thought about it.

The Court: All right. You want the execution of sentence held in abeyance until such time as your motion for new trials can be formally presented?

Mr. Shores: That is our motion, Your Honor.

The Court: Would there be anything—would there by any advantage to the defendants to put that motion in writing formally?

Mr. Shores: We would have to designate, and it would take some time to spell out the various grounds that we feel on which we are entitled to a new hearing or a new trial. We could have it done by Monday.

The Court: I won't be here Monday.

Mr. Shores: Well, the following Monday or any date Your Honor sees fit. As I say, it is not going to jeopardize the City to grant this little stay.

The Court: If there is any good or any advantage to be had, the Court wants it had. I just didn't see how there was to be any. Now, suppose we do it this way, then. As I understand the law, I can suspend the judgment of sentence for 24 hours, and I am doubtful about being able to do it longer in City appeal cases. Would this time tomorrow be too soon?

It seems to be that you have here the ten students and the Court thinks they were misused and misled into a violation of a City Ordinance and has so ruled. Now, if [fol. 51a] there would be any stronger position before the Court of Appeals to have also a denied motion for a new trial, I would want them to have that.

Mr. Shores: We feel they would, Your Honor. Could Your Honor do this? As indicated, we have made our motion for a new trial and would Your Honor give us leave—I mean you can rule on the motion and deny the motion now and give us leave to put it in writing for the record?

The Court: Sure.

Mr. Shores: Then we would immediately make our appeal bonds and the sequence of the record would show a motion

for a new trial, the motion overruled, and the appeal perfected.

The Court: What says the City?

Mr. Davis: I am not sure I see what he is trying to accomplish other than the fact he would like to clutter this record further; but I would prefer not to yield on any point on this thing. Of course, they are entitled to file their motion. I have no objection to giving them several days to file their motion, but other than that, I wouldn't want to be agreeable to any extensions or waivers as to bonds or things of that description.

Mr. Shores: We will file the bond today. We are asking we be permitted to spell out the oral motion we have already made.

The Court: After your appeal bond is filed?

Mr. Shores: That's right.

The Court: I think that is all right.

Well, it was the same judgment and sentence in each of the student cases.

That brings us, I believe, to three other cases, the case of Charles Billups charged with aiding and abetting. The Court finds the defendant guilty as charged in the complaint and fixes his punishment and fine in the sum of $25.00 and 30 days hard labor for the City of Birmingham.

In the case of F. L. Shuttlesworth, charged with aiding and abetting, the Court finds the defendant guilty as charged [fol. 52] in the complaint and fixes his punishment at a fine in the sum of $100.00 and 180 days hard labor for the City.

The case of F. L. Shuttlesworth, charged with false information, the defendant moved for a dismissal and the motion was granted.

Mr. Shores: Your Honor, as to those last two cases we would like to move orally for a motion for a new trial with leave to file written motion within a reasonable time.

The Court: With the appeal bonds forthwith made?

Mr. Shores: That's right.

The Court: All right.

Mr. Shores: How long will Your Honor give us to write those motions up since the bonds will have already been filed? May we have a couple weeks?

The Court: Well, haven't we conscientiously canvassed the issues?

Mr. Shores: We have.

The Court: Is there anything to be gained by thrashing the straw again?

Mr. Shores: We would just like to have it ruled on. Let the record show that the motion is denied.

The Court: All right, so ordered.

Mr. Shores: Then, we will make note of an appeal in each case separately and severally and will forthwith file the appeal bond. What will that bond be, Your Honor?

The Court: $300.00 I believe is mentioned in each case.

The foregoing was all the testimony and oral proceedings.

COUNSEL'S NOTE RE RECORD

The transcript of the sentencing of the petitioners as printed in the *Gober* record appears in identical form in each of the 10 cases.

[fol. 53] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 54]

THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

The State of Alabama,
Jefferson County.

CLERK'S CERTIFICATE

I, Julian Swift, Clerk of the Circuit Court of the Tenth Judical Circuit of Alabama, in and for said County and State, do hereby certify that the foregoing pages, numbered from 1 through 12 both inclusive, contain a full, true and complete transcript of the records and proceedings in this Court (except such parts as are not necessary to be contained therein); that pages numbered from 13 through 53 both inclusive, contain a transcript of evidence together with all proceedings therein as filed in this office, all being in a cause wherein the City of Birmingham is plaintiff, and James Gober is defendant, which said cause

was tried and determined in this Court on the 11th day of October, 1960, and an appeal was taken from the judgment therein to the Court of Appeals of Alabama. Defendants gave bond to answer said appeal.

Witness my hand and the seal of this Court, this the 27th day of January, 1961.

Julian Swift, Clerk of the Circuit Court of the Tenth Judicial Circuit of Alabama.

[fol. 55]

IN THE COURT OF APPEALS OF ALABAMA

JAMES GOBER, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint in this cause, to which ruling Appellant took exception. (Tr. 2, 3, 8 & 16)

2. The Court erred in overruling Defendant's Demurrers filed in this cause, to which ruling appellant took exception. (Tr. 3, 4, 8 & 16)

3. The Court erred in overruling Appellant's Motion to Exclude the Evidence. (Tr. 5, 7, 8, 41 & 42)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10, 12 & 55).

5. The Court erred in allowing Detective C. L. Pierce to testify relative to an alleged conversation had on April 1, with James Edward Gober and James Albert Davis,

with reference to certain admissions of Appellant, in the nature of confession, over Appellant's objections, to which ruling Appellant took exception. (Tr. 37)

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

[fol. 56] Certificate of Service (omitted in printing).

[fol. 57]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 797

JAMES GOBER,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that

the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 58]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 797

JAMES GOBER,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

OPINION—May 30, 1961

HARWOOD, Presiding Judge

This appellant was first convicted in the Recorder's Court of the City of Birmingham for violating Section 1436 of the City Code of Birmingham, Alabama, 1944.

Section 1436, supra, is as follows:

> "Sec. 1436, *After Warning.* Any person who enters into the dwelling house, or goes or remains on the premises of another, after being warned not to do so, shall, on conviction, be punished as provided in Section 4; provided, that this Section shall not apply to police officers in the discharge of official duties."

[fol. 59] On his conviction in the Recorder's Court, the appellant perfected an appeal to the Circuit Court of Jefferson County, where he was again adjudged guilty, and punishment was imposed.

The complaint filed in the Circuit Court reads:

> "Comes the City of Birmingham, Alabama, a municipal corporation, and complains that James Gober,

"within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as Pizitz Department Store, located at 1821 2nd Avenue, North, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944."

The evidence presented by the City in the trial below tends to show that this appellant, together with one James Davis, went to the cafeteria or lunch room in the Pizitz store and seated themselves at a table. According to the appellant, they could not obtain service from the waitresses. Shortly, Dick Pizitz, assistant to the President of Pizitz, arrived and asked the appellant and Davis to leave, and told them they could be served downstairs. The appellant and Davis refused to leave. Either the appellant or Davis, upon refusing to leave, suggested that the police be called.

In response to instructions from a superior officer, a police officer of the City of Birmingham went to the restaurant. He found the appellant and Davis still seated at a table, and placed both under arrest.

This being an appeal from a conviction for violating a city ordinance, it is quasi criminal in nature, and subject to rules governing civil appeals. Accordingly we will limit our review to errors assigned and argued in appellant's brief. *Fiorella* v. *City of Birmingham*, 35 Ala. App. 384, 48 So. 2d 761; cert. den. 254 Ala. 515, 48 So. 2d 768; cert. den. 71 S. Ct. 506, 340 U.S. 942, 95 L. Ed. 680; *Ellis* v. *City of Sylacauga*, 36 Ala. App. 687, 63 So. 2d 33; *Parks* v. *City of Montgomery*, 38 Ala. App. 681, 92 So. 2d 683.

[fol. 60] In the proceedings below the appellant filed a motion to strike the complaint, which motion was overruled. This ruling is asserted as error in Assignment of Error No. 1.

A motion to strike is not the proper method of testing the sufficiency of a complaint. *Taylor* v. *City of Birmingham*, 35 Ala. App. 133, 45 So. 2d 53; *Byrum* v. *Pharo*, 240 Ala. 564, 200 So. 622. Assignment of Error No. 1 is therefore without merit.

Appellant's Assignment of Error No. 2 avers that the court erred in overruling his demurrer to the complaint.

Ground 1 of the demurrer asserts that the complaint does not charge the defendant with any offense under the laws or Constitution of the State of Alabama; Ground 2, that the complaint is insufficient to support a prosecution in that no offense is charged corrigible by the Court; Ground 3, that the complaint is so vague and uncertain as to not apprise the defendant of what he is called upon to defend.

Pretermitting other possible defects, it is clear that all of the grounds are general in nature, and in no wise point out any specific defect in the complaint.

For this reason alone the lower court was justified in refusing to examine the complaint for defects therein, and could properly overrule the demurrer, *Oliveri* v. *State*, 13 Ala. App. 348, 69 So. 357, and a trial court will not be put in error for overruling a demurrer based on general grounds which are not sufficiently specific to point out an alleged defect in the pleading. *Cabiness* v. *City of Tuscaloosa*, 39 Ala. App. 538, 104 So. 778; *Barber* v. *Hollon*, 265 Ala. 323, 91 So. 2d 229.

In brief counsel for appellant argues that the complaint is insufficient in not setting forth by whom the appellant was warned to leave the premises.

No ground of the demurrer raised this point in the court below. Even if the complaint be defective in this regard, a premise we do not accept, the defect was amendable. Sec. 238, Tit. 7, Code of Alabama 1940, provides:

[fol. 61] "Either before or after judgment on demurrer, the court must permit an amendment of the pleadings; • • •"

This section is broad and comprehends all pleadings except indictments, and authorizes amendment of complaints

in prosecutions for violation of city ordinances, as though it were a complaint in a civil action. *Thomas* v. *State*, 58 Ala. 365.

The alleged defect not having been in any wise raised in the court below, and not pointed out by demurrer, is not available on appeal, and will not be considered. *McElhaney* v. *Singleton*, 270 Ala. 162, 117 So. 2d 375; *Campbell* v. *Jackson*, 257 Ala. 618, 60 So. 2d 252.

Grounds 4, 5, 6, 7 and 8 assert the invalidity of the ordinance (Sec. 1436, supra) on various constitutional grounds, *as applied to this defendant*. (Italics ours.) No unconstitutional application of the ordinance to this defendant appears from any of the pleading. Such unconstitutional application would be a matter of evidence. These grounds, setting up a speaking demurrer, necessitated an overruling of the demurrer in this aspect. *Brown* v. *City of Fairhope*, 265 Ala. 596, 93 So. 2d 419; *Kalas* v. *McMahon*, 36 Ala. App. 238, 54 So. 2d 322; *United States Fidelity and Guaranty Co.* v. *Town of Dothan*, 174 Ala. 480, 56 So. 953.

Appellant's Assignments of Error numbers 3 and 4, respectively, are to the effect that the lower court erred in overruling appellant's motion to exclude the evidence, and in overruling appellant's motion for a new trial. Counsel has made no attempt to separate these assignments for argument in brief, and we will treat them jointly, though we wish to observe that the grounds supporting the motion to exclude the evidence are faulty in several aspects, particularly in setting forth erroneous legal principles as their bases. All grounds specified in support of the motion were defective, and the court properly overruled the motion.

Counsel has argued among other matters, various phases of constitutional law, particularly as affected by the [fol. 62] Fourteenth Amendment of the Federal Constitution, such as freedom of speech, in regard to which counsel state: "What has become known as a 'sit-in' is a different, but well understood symbol, meaningful method of communication." Counsel has also referred to cases pertaining to restrictive covenants. We consider such principles entirely inapplicable to the present case.

Counsel also stated in brief that " * * * The prosecution adduced no evidence to prove that they had no such constitutional right * * * " that is, to remain in the restaurant after having been requested to leave. In this, counsel are under a misapprehension as to the burden to be carried by the defense. The City having presented evidence tending to show that the appellant remained upon private premises after having been warned by an officer of the company owner to leave, it was under no burden to go further and offer evidence that the appellant's act was done without lawful excuse. This was defensive matter, the proof of which rested upon the appellant unless the evidence which proved the act also proved the excuse. *Owens* v. *State*, 74 Ala. 401.

As we interpret the argument of counsel for appellant, its tenor may well be illustrated by the following quotations from the brief:

> "Due process and equal protection demand that a Negro be accorded the right to sit at eating counters of privately owned businesses, if he has been a customer in other departments of the store.
>
> * * * * * * *
>
> "That the premises were privately owned should not detract from the high constitutional position which such free expression deserves."

We know of no warrant in law validating the principles asserted by counsel.

As aptly stated in *Browder* v. *Gayle*, 142 F. Supp. 707:

> "In their private affairs, in the conduct of their private businesses, it is clear that the people themselves have the liberty to select their own associates and the persons with whom they will do business, unimpaired by the Fourteenth Amendment. The Civil Rights cases, 109 U.S. 33 S. Ct. 18, 27 L. Ed. 835. Indeed we think that such liberty is guaranteed by the due process of that Amendment."

[fol. 63] Even so, there is no question presented in the record before us, by the pleading, of any statute or ordinance requiring the separation of the races in restaurants. The prosecution was for a criminal trespass on private property.

The Pizitz Department Store is a private business—a private enterprise. It has no connection with any governmental agency, federal, State, County or city.

The appellant entered upon the privately owned and operated premises of the store as a licensee by implied invitation. He had no interest in the premises. While a distinction exists between a licensee and an invitee in so far as liability for negligence on the part of the owner of the premises is concerned, the principles governing appellant's conduct in the present consideration must be governed by the rules pertaining to licensees, for in general, that is the position he occupied even though on the premises by an implied invitation.

The Pizitz store, being the owner of its premises, had a full right to limit the use of its own premises as it saw fit.

By its own choice it could limit the use of any part of its premises. It exercised this right to limit the use of its restaurant.

In the absence of statute, a restaurant owner may accept or reject customers on purely personal choice. *Nance* v. *Mayflower Tavern*, 106 Utah 517, 150 P. 2d 773; *Noble* v. *Higgins*, 158 N. Y. S. 867, 95 Misc. 328.

The right to operate a restaurant on its own premises under such conditions as it saw fit to impose was an inalienable property right possessed by the Pizitz store. The appellant would destroy this property right by attempting to misapply the Fourteenth Amendment, ignoring the provision in that Amendment that grants the right to a private property owner to the full use of his property, that is: "Nor shall any state deprive any person of life, *liberty, or property*, without due process of law." (Italics ours.) [fol. 64] As stated in *Williams* v. *Howard Johnson Restaurant*, (C.C.A. 4) 368 Fed. 2d 845, there is an "important distinction between activities that are required by the State and those which are carried out by voluntary choice and

without compulsion by the people of the State in accordance with their own desires and social practices."

It is fundamental, and requires no citation of authority, that the grantor of a license, which has not become coupled with an interest, may revoke the license at will.

When the appellant was requested to leave the restaurant by an official of the Pizitz store, and refused to leave, his status as an invited licensee was destroyed, and he was thereafter on the premises as a trespasser. As stated in *Martin* v. *City of Struthers*, 319 U. S. 147, 63 S. Ct. 862, 87 L. Ed. 1313:

> "Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off."

Boynton v. *Virginia*, 81 S. Ct. 182, relied on by the appellant, was decided on the basis of the Federal Interstate Commerce Act, and is to the effect that said act prohibits the exclusion of Negroes from restaurants operated or controlled by an interstate carrier as a part of its business. This doctrine cannot be said to create a constitutional right to trespass on private property, regardless of race.

Likewise, we find the doctrine of *Marsh* v. *State of Alabama*, 326 U. S. 501, 90 L. Ed. 265, inapplicable to the present case. The Marsh case, supra, concerned the right to distribute religious pamphlets on the sidewalk of a company owned town. As stated by the court, this town though owned by a company, had "all the characteristics of any other American town" in so far as municipal functions were concerned, and therefore should be subjected to constitutional limitations imposed on regular public municipalities. Here we are concerned with a private owner in the use of his private property.

We find no merit in appellant's Assignments numbers 3 and 4.

[fol. 65] Assignment of Error number 5 relates to a ruling concerning the admission of certain evidence. Counsel has not argued this assignment in brief, and pretermit consideration thereof.

Affirmed.

[fol. 66]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 797

JAMES GOBER,

v.

CITY OF BIRMINGHAM,

Appeal from Jefferson Circuit Court

APPLICATION FOR REHEARING—June 14, 1961

Now comes appellant, in the above styled cause, and respectfully moves this Honorable Court to grant Appellant a rehearing in said cause, and to reverse, revise and hold for naught its Judgment rendered on, to-wit, the 30th day of May, 1961, and affirming the Judgment of the Circuit Court of Jefferson County, Alabama, and to enter an Order, reversing said Judgment.

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

ORDER OVERRULING APPLICATION FOR REHEARING —June 20, 1961

It is ordered that the application for rehearing be and the same is hereby overruled. Per Curiam.

COUNSEL'S NOTE RE RECORD

The application for rehearing in the Alabama Court of Appeals and that Court's order overruling the application in the *Gober* record, is identical to the similar applications and orders filed in the other 9 cases except for the captions.

[fol. 67] [File endorsement omitted]

No. 762 Sixth Division

Ex Parte: James Gober

IN THE SUPREME COURT OF ALABAMA

JAMES GOBER, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

[fol. 68] *To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama*

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein James Gober was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating 1436 of the General City Code of Birmingham, viz:

> "Any person who enters into the dwelling house or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be

punished as provided in §4, provided that this Section shall not apply to police officers in discharge of official duties."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the [fol. 69] prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) Days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto Your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause upon the opinion judgment rendered in the case of James Gober vs. City of Birmingham, Sixth Division—797, decided May 30, 1961.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law; in violation of the Fourteenth Amendment to the United States Constitution.

B. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.

The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities of the petitioner, in that the petitioner was denied equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 70] Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises, as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson,
By Oscar W. Adams, Jr., Attorneys for Appellant.

[fol. 71] *Duly sworn to by Oscar W. Adams, Jr., jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 72]

IN THE SUPREME COURT OF ALABAMA

The Court met in Special Session pursuant to adjournment

Present: All the Justices

6th Div. 762

Ex Parte: JAMES GOBER, Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

(Re: James Gober vs. City of Birmingham)

Jefferson Circuit Court

ORDER DENYING PETITION FOR WRIT OF CERTIORARI —September 14, 1961

Comes the Petitioner in the above styled cause and the Petition for Writ of Certiorari to the Court of Appeals being Submitted on Briefs and duly examined and understood by the Court,

It Is Ordered that the Writ of Certiorari be and the same is hereby denied and the petition dismissed at the cost of the petitioner for which cost let execution issue.

Livingston, C.J., Simpson, Goodwyn and Coleman, JJ., Concur.

COUNSEL'S NOTE RE RECORD

The order of the Supreme Court of Alabama denying the writ of certiorari in the *Gober* record is identical to those in the records pertaining to the other 9 petitioners except for the captions.

[fol. 73]

No. 762 Sixth Division

Ex Parte James Gober

In the Supreme Court of Alabama

James Gober, Appellant,

vs.

City of Birmingham, Appellee.

Application for Rehearing—Filed September 28, 1961

Now comes Appellant, in the above styled cause, and respectfully moves this Honorable Court to grant Appellant a Rehearing in said cause, and reverse, revise and hold for naught its Judgment rendered on to-wit, the 14th day of September, 1961, denying appellant the Writ of Certiorari and dismissing the petition, and to enter an Order reinstating appellant's petition, and directing that a Writ of Certiorari be issued out of and under the Seal of this Court, to the Court of Appeals of Alabama, to the end that this cause may be reviewed and determined by this Honorable Court.

Appellant further moves the Court to grant a Stay of Execution in this cause, during the pendency of this Application for a Rehearing.

Submitted herewith is a Brief and Argument, in support of said Motion.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant, By Oscar W. Adams.

Counsel's Note Re Record

The application for rehearing of the denial of the writ of certiorari, printed in the *Gober* record, is identical to that appearing in the records pertaining to the other 9 petitioners except for the captions.

[fol. 74]

IN THE SUPREME COURT OF ALABAMA

The Court met pursuant to adjournment

Present: All the Justices

6th Div. 762

Ex Parte: JAMES GOBER, Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

(Re: James Gober vs. City of Birmingham)

Jefferson Circuit Court

ORDER OVERRULING APPLICATION FOR REHEARING

—November 2, 1961

It Is Hereby Ordered that the application for rehearing filed in the above cause by the petitioner on September 28, 1961, be and the same is hereby overruled.

(Livingston, C.J., Simpson and Coleman, JJ., concur.)

COUNSEL'S NOTE RE RECORD

The order of the Supreme Court of Alabama overruling the application for rehearing in the *Gober* record is identical to the corresponding orders in the records pertaining to the other 9 petitioners except for the captions.

[fol. 75] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 75a] [File endorsement omitted]

No. 762 Sixth Division

Ex Parte: James Gober

In the Supreme Court of Alabama

James Gober, Appellant,

vs.

City of Birmingham, Appellee.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Appellant.

Proceedings on Petition for Certiorari

July 3, 1961 Submitted on Briefs

September 14, 1961 Writ Denied: No Opinion

September 28, 1961 Application for Rehearing Filed

November 2, 1961 Application for Rehearing Overruled

Counsel's Note Re Record

The page in the *Gober* record which lists the proceedings in the Supreme Court of Alabama on the petition for certiorari and gives the dates of rulings, etc., is identical to the corresponding page in the records pertaining to the other 9 petitioners except for the captions.

[fol. 76] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN AND FOR JEFFERSON COUNTY

No. 20779

THE CITY OF BIRMINGHAM,

vs.

JAMES ALBERT DAVIS

APPEAL BOND [omitted in printing].

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20779

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JAMES ALBERT DAVIS, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that James Albert Davis, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as Pizitz Department Store, located at 1821 2nd Avenue, North, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of

Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20779

CITY OF BIRMINGHAM,

vs.

JAMES ALBERT DAVIS.

MOTION TO STRIKE—Filed October 10, 1960

Comes now James Albert Davis, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion; sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assem- [fol. 3] bly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause,

as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20779

CITY OF BIRMINGHAM,

vs.

JAMES ALBERT DAVIS.

DEMURRERS—Filed October 10, 1960

Comes now James Albert Davis, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is [fol. 4] cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, in (sic) unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in

violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20779

CITY OF BIRMINGHAM, Plaintiff,

versus

JAMES ALBERT DAVIS, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Pizitz eating facilities, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Pizitz eating facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Pizitz eating facilities, an establishment performing an economic function invested with the public interest; that defendant peacefully was attempting to obtain service in the facilities of Pizitz eating facilities in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Birmingham, Alabama to permit defendant, a Negro, and other [fol. 6] members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Pizitz's Eating Facilities; a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color;

and, that in furtherance of this racially discriminatory practice of Pizitz eating facilities, defendant was arrested on the basis of race or color, under color of law, to enforce Pizitz's eating facilities racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the [fol. 7] complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Pizitz's eating facilities, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Pizitz's eating facilities, open to the public, which was denied to him solely because of race or color; that Pizitz's eating facilities, was and is offering, for a price, to serve all members of the public with food; that this public facility Pizitz's eating facilities, is, along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if Pizitz's eating facilities and other like facilities were all to withdraw said service; that having determined to offer said valuable service to the public, Pizitz's eating facilities is required to provide such service in the manner of state operated facilities of a like nature, to wit: That Pizitz's eating facilities may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Oscar W. Adams, Jr., Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

JAMES ALBERT DAVIS.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Com-

plaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said James Albert Davis, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said James Albert Davis, [fol. 9] perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty-one and 75/100 ($51.75) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-seven and 75/100 ($47.75) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-four days, at the rate of 75 cents per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20779

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JAMES ALBERT DAVIS, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960.

Now comes the defendant, in the above styled cause, and with leave of the Court first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following, separately and severally:

1. That the Judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in over-ruling objections, by the defendant to the introduction of evidence on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

11. The Court erred in overruling defendant's demurrers filed in this cause.

[fol. 11] 12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as

applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty, without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this case.

17. That it appeared from the evidence that no owner of the premises involved, had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant, for trespass on private property.

20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in the store.

[fol. 12] Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

George Lewis Bailes, Circuit Judge.

[File endorsement omitted]

APPEAL BOND TO COURT OF APPEALS (omitted in printing).

[fol. 14]

Transcript of Evidence—October 10, 1960

(omitted in printing)

COUNSEL'S NOTE RE RECORD

The parties stipulate that the trial transcript in the *Davis* case is identical to that in the *Gober* case.

[fol. 51]

TRANSCRIPT OF SENTENCING (omitted in printing).

[fol. 56]

REPORTER'S AND CLERK'S CERTIFICATES TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 58]

IN THE COURT OF APPEALS OF ALABAMA

JAMES ALBERT DAVIS, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint in this cause, to which ruling Appellant took exception. (Tr. 2, 3, 8 & 16)

2. The Court erred in overruling Defendant's Demurrers filed in this cause, to which ruling appellant took exception. (Tr. 3, 4, 8 & 16)

3. The Court erred in overruling Appellant's Motion to Exclude the Evidence. (Tr. 5, 7, 8, 41 & 42)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10, 12 & 55)

5. The Court erred in allowing Detective C. L. Pierce to testify relative to an alleged conversation had on April 1, with James Edward Gober and James Albert Davis, with reference to certain admissions of Appellant, in the nature of confession, over Appellant's objections, to which ruling Appellant took exception. (Tr. 37)

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

[fol. 59]

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 60]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

.....JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 796

JAMES ALBERT DAVIS,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
CERTIFICATE FILED

January 30, 1961
TRANSCRIPT FILED

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 61]

APPLICATION FOR REHEARING AND ORDER OVERRULING
(omitted in printing).

[fol. 61a]

PROCEEDINGS ON PETITION FOR CERTIORARI
(omitted in printing)

[fol. 62] [File Endorsement Omitted]

IN THE SUPREME COURT OF ALABAMA

No. 761 Sixth Division

Ex Parte: James Albert Davis

JAMES ALBERT DAVIS, Appellant,

v.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

[fol. 63] *To the Honorable Chief Justice and Associate Chief Justices of the Supreme Court of Alabama*

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein James Albert Davis was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing

was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Sec. 1436 of the General City Code of Birmingham, viz:

> "Any person who enters into the dwelling house or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be punished as provided in Sec. 4, provided that this Section shall not apply to police officers in discharge of official duties."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the [fol. 64] prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) Days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentences, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto Your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause upon the opinion judgment Birmingham, Sixth Division—797, decided May 30, 1961. rendered in the case of James Albert Davis vs. City of

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

b. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.

The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities of the petitioner, in that the petitioner was denied equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 65] Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

[fol. 66] *Duly sworn to by Oscar W. Adams, Jr., jurat omitted in printing.*

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 67]

ORDER DENYING PETITION FOR WRIT OF CERTIORARI (omitted in printing)

[fol. 68]

APPLICATION FOR REHEARING (omitted in printing)

[fol. 69]

ORDER OVERRULING APPLICATION FOR REHEARING (omitted in printing)

[fol. 70]

CLERKS' CERTIFICATES TO FOREGOING TRANSCRIPT (omitted in printing)

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20781

THE CITY OF BIRMINGHAM,

vs.

ROY HUTCHINSON.

APPEAL BOND (omitted in printing)

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20781

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROY HUTCHINSON, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Roy Hutchinson, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking and dining purposes and located within the building commonly and customarily known as Loveman's Department Store, located at 216 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

94

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20781

CITY OF BIRMINGHAM,

vs.

ROY HUTCHINSON.

MOTION TO STRIKE—Filed October 10, 1960

Comes now Roy Hutchinson, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the [fol. 3] Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro

citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20781

CITY OF BIRMINGHAM,

vs.

ROY HUTCHINSON.

DEMURRERS—Filed October 10, 1960

Comes now Roy Hutchinson, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

[fol. 4] 2. That the complaint, affidavit, or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20781.

CITY OF BIRMINGHAM, Plaintiff,

versus

ROY HUTCHINSON, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Loveman's, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Loveman's Eating Facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Loveman's, an establishment performing an economic function invested with the public interest; that defendant peacefully was attempting to ob-

tain service in the facilities of Loveman's in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Birmingham [fol. 6] ham, Alabama to permit defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Loveman's, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in furtherance of this racially discriminatory practice of Loveman's, defendant was arrested on the basis of race or color, under color of law, to enforce racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a Negro, was arrested and charged is unconstitutional on its

face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the [fol. 7] complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: Loveman's and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Loveman's, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establisnes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Loveman's, open to the public, which was denied to him solely because of race or color; that ....., was and is offering, for a price, to serve all members of the public with food; that this public facility Loveman's, is, along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if ..... and other like facilities

were all to withdraw said service; that having determined to offer said valuable service to the public, ... is required to provide such service in the manner of state operated facilities of a like nature, to wit: That Loveman's may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

CITY OF BIRMINGHAM,

vs.

ROY HUTCHINSON.

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

JUDGMENT ENTRY—Filed October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause; and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same

is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts, and on this the 11th day of October, 1950, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Roy Hutchinson, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 9] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Roy Hutchinson, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-eight and 75/100 ($48.75)

dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-four and 75/100 ($44.75) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty days, at the rate of 75c per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20781

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROY HUTCHINSON, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause, and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following separately and severally:

1. That the Judgment of the Court in said case, is contrary to the law.

2. For that the Judgment of the Court is contrary to the facts.

3. For that the Judgment of the Court is contrary to the law in the case.

4. In that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the Judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in over-ruling objections, by the defendant to the introduction of evidence on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

11. The Court erred in overruling defendant's demurrers filed in this cause.

12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this [fol. 11] defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty, without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

17. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant for trespass on private property.

20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in the store.

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. [fol. 12] Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

George Lewis Bailes, Circuit Judge.

[File endorsement omitted]

APPEAL BOND TO COURT OF APPEALS (omitted in printing).

[fol. 14]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20781

THE CITY OF BIRMINGHAM, a Municipal Corporation,

versus

ROY HUTCHINSON.

Birmingham, Alabama

Transcript of Evidence—October 10, 1960

Before: Honorable GEORGE L. BAILES, Judge.

APPEARANCES:

For the City, Mr. Watts E. Davis.

For the Defendant, Messrs. A. D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson.

[fol. 16] *Proceedings*

The Court: Let the record show that there is a stipulation that Robert Kind and Roy Hutchinson were both present in Court and tried together. Let the record show that.

Mr. Billingsley: Your Honor, we filed the same motions as in the other cases with the understanding that we will have the same rulings and an exception.

Mr. Davis: If the Court pleases, I believe there are some witnesses in this case in the Courtroom and they have asked for the rule in each of the cases.

(Witnesses placed under the Rule.)

Mr. Davis: Mr. Martin.

ELWOOD K. MARTIN, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state your full name, please, sir?
A. Elwood K. Martin.
Q. You are employed by the City of Birmingham as a police officer?
A. Yes, sir.
Q. Were you so employed on March 31, 1960?
A. Yes, sir.
Q. Mr. Martin, on March 31, of this year did you receive a call or an order to go to Loveman's Department Store?
A. Yes, sir.
Q. Is that in the City of Birmingham?
A. Yes, sir.
Q. Third Avenue and 19th Street North?
A. Yes, sir.
Q. Did you go to the dining or eating area inside of [fol. 17] Loveman's?
A. Yes, sir, I did.
Q. What did you observe taking place in and about near or at the eating place when you arrived there?
A. I noticed that a rope had been tied from one post to another post going up to the mezzanine or the eating place of Loveman's with a sign on it stating closed. I went over that and went up to the cashier's cage there at Loveman's. I noticed two Negro boys sitting to the right of the Cashiers' cage at the tables there where food is served.
Q. Did you have any conversation yourself with these boys?
A. With the boys?
Q. Yes, sir.
A. None other than to tell them they were under arrest.
Q. Was there any conversation—I withdraw that—how did you receive word to go to Loveman's?
A. A three-wheeled motor cycle came up, Officer J. L. Holt, and told me to get on his motor cycle and go with him to Loveman's.

Mr. Davis: I believe that is all.

Cross-examination.

By Mr. Adams:

Q. Officer Martin, is there any sign where these two defendants were sitting indicating whether this was white or Negro eating facilities?

A. I did not observe any signs other than the closed sign.

Q. Were the lights turned off?

A. I can't recall.

Q. Was there anybody else seated at the counter besides these two defendants?

A. There was no one seated at any table. There is no counter there the best I can remember. They are all tables. I believe there was no one else seated at any table.

Q. Did anybody from Loveman's inform you that they had told these two boys to leave?

[fol. 18] A. They did not inform me personally. They informed one of my superior officers.

Q. Do you know that of your own personal knowledge?

A. I don't know that of my own personal knowledge.

Q. Who was it that informed him?

A. I do not know what capacity he was but his name was either Schultz or Smith. I forget which one his name was. Schultz I believe or Smith. I forget which one it was.

Q. Did you issue a warrant for the arrest of these two boys?

A. Did I issue a warrant?

Q. Yes.

A. No, I did not.

Q. Did you have a warrant for their arrest?

A. I did not.

Q. Did anyone on the premises when you arrived on the premises inform you that they had told these boys to leave?

A. They did not tell me personally that they had told them to leave. They told my superior officer.

Q. Is Loveman's a store that is offering merchandise to the public generally?

A. I am under the assumption they do. I do not know personally.

Q. Do you know whether or not they have separate lunch counters for Negroes and for whites?

A. I do not know that.

Q. Were these two defendants boisterous when you arrived at the scene?

A. No, they were not.

Q. Was there any disorder at the lunch table?

A. There was no disorder other than the fact that they were sitting at the table. As far as their, as far as them being disorderly they were not disorderly.

Q. What charge did you place against these defendants, [fol. 19] Officer Martin?

A. Trespassing after warning.

Mr. Adams: That is all.

Mr. Davis: No further questions. Mr. Schmid.

Carl A. Schmid, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state your full name?

A. Carl A. Schmid.

Q. By whom are you employed, Mr. Schmid?

A. I personally am employed by Price Candy Company of Kansas City.

Q. Were you employed by Price Candy Company on March 31, of this year, sir?

A. Yes.

Q. Did you have a concession in Loveman's?

A. Yes.

Q. What is their concession?

A. All of the food departments, candy factory and retail candy departments.

Q. I will ask you if on the morning of March 31, of this year if two colored boys came and sat down in the dining area at Loveman's?

A. Yes, sir.

Q. I believe that is on the mezzanine?

A. That is right.

Q. Did you have occasion to talk to these two boys on that occasion?

A. No, I did not.

Q. Did anyone employed by your company or by Loveman's ask either of these boys to move?

A. Yes.

[fol. 20] Mr. Hall: If Your Honor please, we object to that answer unless—he said did anyone ask them to move without saying it was in his presence.

The Court: Did he hear anyone suggest to the two lads that they moved?

Mr. Hall: It was not asked that way. He asked did anyone tell them to move.

The Court: Did you hear them?

The Witness: Yes.

Mr. Hall: If he heard it that is different.

Q. Did anyone in your hearing tell either or both of these two boys to move?

A. Yes.

Q. Who was that?

A. Mr. Kidd.

Q. Mr. Kidd?

A. Mr. Kidd, yes.

Q. What is his capacity or connection there?

A. He is in the Protection Department.

Q. Is that the store detective?

A. Store detective.

Q. Who is he employed by?

A. Loveman's.

Q. Now the conversation he had with these two boys was in your presence?

A. I was present, yes.

Q. What did he tell them to do?

A. He announced in general terms that the tearoom was closed and for everyone please to leave.

Q. Did everyone leave?

A. Most of them. I mean quite a few people left. Of

course some of them started to eat and tried to finish their luncheon naturally.

Q. Were the two colored boys eating?

[fol. 21] A. No.

Q. Did they make any remarks or statement to Mr. Kidd in your presence?

A. No.

Q. And did they get up and leave?

A. No.

Q. Did they remain seated until the police arrived?

A. Yes.

Mr. Davis: That is all.

Cross examination.

By Mr. Adams:

Q. How do you spell your name?

A. S-C-H-M-I-D.

Q. When these two defendants were seated there, this was at Loveman's?

A. Yes.

Q. How many whites were also seated there?

A. Oh, it was early in the morning and I don't think there were more than maybe 40 or 50 there.

Q. What was the name of the person who made the statement, you made the statement in your words in general terms that the lunchroom was closed. Who was that?

A. Mr. Kidd.

Q. Now when he did that how many whites left and how many were left sitting there after that statement was made?

A. Well, as I said, they gradually moved out. Some of them that just had coffee or Coca-Cola left immediately, but some of them had light luncheons or regular luncheons did not leave.

Q. They stayed there?

A. Until they finished their luncheon, yes.

Q. Were you there when Officer Elwood Martin came?

A. Well I am not sure about the name; but the Lieutenant in the case was Mr. Purvis. He came to see me and asked, "Are you Mr. Schmid?" And I said, yes.

[fol. 22] Q. That is all right. When the officer did come the two defendants were still seated in the lunchroom, is that correct?

A. Uh-huh.

Q. Now what happened when he arrived and they were still seated there?

A. Mr. Purvis came to me and he said, "Are you the Manager?" And I said, "Yes." He said someone called us that you had two people in here that were trying to be served and I said, "Yes," and he said, "Where are they?" And I said, over there.

Q. Did he say two people or did he say two Negroes?

A. Two people.

Q. Do you in Loveman's call the police department when two people try to be served?

A. As far as I am concerned at Loveman's if there is any difficulty regardless of what they are, disturbance of the peace, or anything, we call the protective department.

Q. Was there any disturbance of the peace?

A. It naturally is you know in this case.

Q. What happened?

A. Well immediately the waiters went off the floor. They didn't want to wait on anyone. The waiters were leaving.

Q. They left the premises?

A. They left the floor immediately.

Q. That is when you called the police?

A. I didn't call them. I don't know who called but my secretary and the cashier had strict instructions if anything should come up like that, any disturbance to call the detective. Now who called, I don't know.

Q. What was the disturbance, Mr. Schmid?

A. Just the natural thing, it was an unusual thing to happen.

Q. What was it that was unusual?

A. When the waiters left the floor.

Q. And someone called the police officers because the waiters left the floor?

[fol. 23] A. I don't know who called the police. I know someone called the Protective Department in the store. I was not on the floor at the time myself.

Q. Now, Mr. Schmid, isn't there, what you are saying

isn't it that the police officers were called because two Negroes were sitting there? Isn't that what you are trying to say?

A. No, I wouldn't know.

Q. Isn't that unusual?

A. Oh, it is very unusual, I think, yes.

Q. Is that what caused the disturbance?

A. In my opinion it did.

Q. Now when the police officer came did he put these two Negroes under arrest?

A. I don't know.

Q. Did you see the police officers take the two Negroes out?

A. I don't think I was there right at the time when he took them out if he did take them out.

Q. When did you find out that they were gone?

A. Well I don't know. My office is back in the corner. I was not right there when they took them out.

Q. When the officers came you left, is that right?

A. I left.

Q. In the midst of the disturbance you left? Now how many whites were still sitting there when the two Negroes were there, when the police officers came?

A. Oh, I would say probably 40, to start, and there was probably about 25 there.

Q. Twenty-five there?

A. Yes.

Q. Did they take any of them out?

A. No, not that I know of.

Q. Did they arrest any of the whites?

A. If they did I don't know anything about it.

[fol. 24] Q. You never heard anything about it?

A. No.

Q. You have not been called on to testify about any of them?

A. No.

Q. Do you have a sign on the place for whites only?

A. No.

Q. Do you have any separate accommodations for Negroes at Loveman's?

A. Not to my knowledge.

Q. You just have one eating facility?
A. We have two, one in the basement.
Q. Is that for whites only?
A. Yes.
Q. And the one upstairs is for whites only, too?
A. Yes.
Q. Mr. Schmid, Loveman's is a Department Store serving general households, furnishings, notions and general goods to the public, is that correct?
A. I presume so, yes.
Q. Is your company so far as you know authorized to have an operation in Loveman's?
A. Uh-huh.
Q. Your position is what, Mr. Schmid?
A. I am the Manager.
Q. You work under I think the Price Candy Company?
A. But we follow Loveman's regulations and policies.

Mr. Adams: That is all.

Mr. Davis: No further questions. Would you tell Mr. Kidd to come in.

D. V. KIDD, called as a witness, having been first duly sworn, testified as follows:

[fol. 25] Direct examination.

By Mr. Davis:

Q. Will you state your full name, please, sir?
A. D. V. Kidd.
Q. Are you now and were you employed on March 31, 1960 with Loveman's Department Store?
A. I was.
Q. It is in the City of Birmingham?
A. Yes.
Q. Mr. Kidd, in what capacity were you then affiliated with Loveman's, March 31?
A. Store Detective, store protection as it is referred to.
Q. Do you recall any unusual situation existing on the morning of March 31, 1960 in and around the mezzanine eating area at Loveman's?

A. There was two colored boys sitting on the mezzanine and I notified the people who were milling around, I notified all of the people, white people, to leave as we were closing the mezzanine in their presence, I did not directly speak to the two colored boys who were sitting at a table, but they overheard what I told the white people that we were closing the lunch room.

Mr. Hall: If Your Honor please, we object to Mr. Kidd's conclusion that the defendants overheard anything and ask it be stricken.

The Court: All right.

Q. They were seated at tables on the mezzanine?

A. Yes, sir.

Q. There are no counters?

A. It was at tables spaced approximately three feet apart in either direction from wall-to-wall.

Q. Do you know the names of these two boys Mr. Kidd?

A. No, sir, I do not.

[fol. 26] Q. Do you see either one of them in the Courtroom here?

A. Well, I did not pay any attention to who they were because their backs were to me and I was notifying the people in the adjacent area.

Q. Did the police officer arrest them in your presence?

A. No, sir, I was in the back of the mezzanine inviting, notifying people we were closing the mezzanine at the time when the officers came in and I seen them leaving going downstairs to the first floor.

Q. And there were only two colored boys there that morning seated in the eating area?

A. Yes, sir.

Q. The table these two boys were seated at was near or adjacent to a table occupied by white people?

A. It was.

Q. Did you see, did you say in their presence that the place was closed, in their presence and hearing?

A. Yes, sir, that we were closing the place and would they please—

Q. Excuse me, go ahead.

A. That we were closing the place and would they please move.

Q. How many times did you announce that in the eating area?

A. Three times.

Q. Three times?

A. At three different tables adjacent to the table they were occupying.

Q. Did you announce the place was closed?

Is that the way you put it?

A. Yes, sir, closed.

Q. Did you hang up a sign of some sort in the area indicating the place was closed?

A. Yes, sir, we did.

Q. Did these boys ask for service after the whites had gone out?

[fol. 27] A. That I do not recall, because I was only on the mezzanine area back near the wall. I could not see them or hear what they had to say.

Q. How near were you to them when you announced the place was closed on the occasion you were close to them?

A. Three feet.

Q. Three feet?

A. Three feet on either side on three different sides which was three different tables that bordered the table they were occupying.

Q. Did they make any reply whatever to you?

A. No, sir.

Q. Did they move at all?

A. No, sir, they remained seated.

Q. How long did they remain seated after you announced the place was closed?

A. They were there I would say about five minutes. By that time the officers had arrived and were going down the stairway with them.

Mr. Davis: I believe that is all.

Cross-examination.

By Mr. Adams:

Q. What was your reason for closing the place?

A. Mr. Schmid had ordered the place to be closed. Mr. Schmid is the Manager for the cafeteria or eating room, tearoom as it is referred to by the company.

Q. Would your statement be the same if I informed you, Mr. Schmid's testimony was to the effect that he did not order these boys to leave, he did not close the place down but it was your instructions that the place be closed.

A. Mr. Schmid placed a sign up when I announced the place was closed.

Q. In other words, he did it after you made your state-[fol. 28] ment that the place was closed?

A. Yes, sir.

Q. Well it was your statement that closed the place down?

A. That we were closing the place.

Q. You were the one that made that statement. Now what was it Mr. Kidd that caused you to close the place down?

A. The commotion that was on the mezzanine. I did not know what was the cause of the commotion. When I began closing the place down then I noticed after the crowd had dispersed that the two colored boys were occupying a table.

Q. What was the commotion you referred to?

A. The people were standing up milling around.

Q. Don't people stand up and mill around frequently?

A. Not in that order.

Q. Mr. Kidd, if people had been standing up milling around, would you have closed the place down, if there had been no Negroes sitting there?

Mr. Davis: We object to that as speculative and calls for a mental operation incompetent, irrelevant, immaterial.

The Court: I would leave that out.

Mr. Adams: We except.

Q. Were these Negroes who were seated there boisterous, rude or anything of the nature?

A. No, they just remained seated.

Q. And did quite a few of the white patrons still remain seated while they were seated there?

A. Definitely not. That is the way the commotion started by the people getting up and leaving the area.

Q. All of the white people got up when these Negroes were seated there?

A. They did.

Q. They left their food?

A. Left their food.

Q. Didn't finish their plates or anything?

[fol. 29] A. They did not.

Q. Well now isn't it a fact some of them did move and Mr. Kidd didn't some of them stay there and finish their meals?

A. They did not.

Q. All of them got up and left?

A. Right.

Q. Everyone?

A. Right.

Q. Did you see the police officers arrest the two defendants?

A. I seen them coming down the stairway from the mezzanine to the first floor with them.

Q. Did you call the City of Birmingham?

A. I did not.

Q. Do you know who called the City of Birmingham?

A. I do not.

Q. So far as you know didn't anybody call them, is that right?

A. That is right.

Q. Did you tell any officer what had happened when he got there?

A. To the best of my knowledge I don't recall having offhand a conversation outside that I had noticed the people were milling around and I had found the two colored boys sitting there and we had closed the tea area.

Q. When the officers came where was Mr. Schmid?

A. He was on the mezzanine.

Q. Was he there when the officers took the two Negro defendants away?

A. That I wouldn't say because I was in the back of the mezzanine and the pillars of the mezzanine obstructed my view.

Q. Do Negroes trade at other departments in Loveman's?

A. They do.

Q. Do they have separate accommodations in any other department at Loveman's?

[fol. 30] A. That I do not recall.

Q. You have never seen any, have you?

A. No.

Q. Do you have any separate accommodations at all for Negroes and whites in Loveman's?

A. We do up on the seventh floor, a place that we may be able to serve colored.

Q. Food?

A. Yes.

Q. And that is for Negroes?

A. Well the colored use that area, that particular area.

Q. Can whites use it?

A. Well I have never been in the place. I wouldn't recall whether they have any signs or not.

Q. Do you know whether they do serve Negroes there?

A. They do serve them.

Q. Do they serve Negroes in the place where these two Negroes were arrested?

A. I don't recall ever seeing any colored served in the tearoom.

Q. Do you know whether or not they would be served?

A. I don't know what the store policy is.

Mr. Davis: We object to that. It is all incompetent, irrelevant and immaterial. I have tried to be patient and tolerant.

Mr. Adams: Judge, I think it is quite relevant. Our theory of the case is that Loveman's is a public department store, invites people and the public generally to purchase goods for their comfort and well-being and they invite them to come in. People are invitees in Loveman's and they have no policies so far as separation or discrimination in any place except their lunchroom and tearoom. And we contend that policy and the law which permits it vio-

lates these defendants' rights. So therefore I think all that I have said is material, whether you agree with that [fol. 31] position or not, it is certainly material on the issues raised in this case.

The Court: I am ashamed to admit I didn't get the last question.

(Question read as follows: Do you know whether or not they would be served?)

The Court: I don't think you could ask what would happen in the subjunctive mood. I don't think you can do that, but leave it in.

Q. I wanted to ask him—do you know whether Loveman's is a store which invites people and the public generally to purchase goods there?

A. They do.

Mr. Davis: What was your answer?

The Witness: They do.

Q. Colored and white? Do Negroes and white come into Loveman's and purchase goods?

A. They do.

Q. Frequently?

A. They do.

Mr. Adams: That is all.

Redirect examination.

By Mr. Davis:

Q. I believe you were asked the question in substance so far as you know no one 'phoned the police. Do you have any personal knowledge on the subject of who, if anyone, did call the police?

A. No, I do not.

Q. You have no personal knowledge whatever on the subject?

A. No, sir, I do not have.

Q. He was talking about members of both races being invited into the store. Is it your information that members of both races are invited to eat on the mezzanine?

A. Not that I know of.

[fol. 32] Mr. Davis: That is all.

Recross examination.

By Mr. Adams:

Q. Do you know have they been told not to come and eat in the tearoom in Loveman's?

Mr. Davis: We object to that as incompetent, irrelevant, and it wouldn't make any difference what they have done in the past, but on this occasion,

Mr. Adams: Counsel asked if Loveman's had invited them to come and eat together on the mezzanine and I asked whether they have been told not to come and eat.

Mr. Davis: They were invited not to on this occasion at least.

The Court: Well let him answer it if he knows.

Q. Have they been invited not to eat there?

A. Well in my short time I have been there I have never, the policy of the store I do not know, I have never been informed in regard to that although on all of the occasions I visited the mezzanine I have never seen any colored eating on the mezzanine.

Q. You don't know if anybody at Loveman's called the City of Birmingham?

A. I do not know.

Q. Did you sign any complaint or any warrant for the arrest of these two defendants?

A. Not that I recall did I sign any.

Q. Your position is what?

A. Store protection or store detective in other words.

Q. That would come in your department?

A. Well to a certain extent, it would.

Q. You would be the person to do so?

Mr. Davis: We object to that.

The Court: To do what?

Mr. Adams: To sign a complaint or warrant or charge against anybody.

[fol. 33] The Court: He couldn't sign a warrant I am sure unless he has a deputy's commission.

Mr. Adams: Not as a police-officer.

The Court: Not as anybody. He just is without authority to sign a warrant.

Mr. Adams: Could he sign an affidavit?

The Court: Oh, anybody can do that.

Q. You did not sign an affidavit, did you?

A. I have not.

Mr. Adams: That is all.

Mr. Davis: That is all. The City rests if the Court pleases.

Mr. Shores: We rest and Your Honor we would like to file motions in both cases, motions to exclude. I want to point out in these two motions in addition to the other grounds there is no testimony that anybody warned the parties to move and that they remained after warning. Did Your Honor overrule the motion to exclude?

The Court: Yes, I thought we had stipulated we would have the same motions and the same demurrers in all of the cases.

Mr. Shores: You didn't stipulate the same ruling.

The Court: And the same ruling.

Mr. Adams: In some of the cases the evidence is not exactly the same and we reserve the right to make observations where it is not.

The Court: Of course you have a perfect right to do that but the stipulation is that the ruling will be the same in each of them up to now.

[fol. 34] Transcript of Sentencing (omitted in printing).

[fol. 39] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 41]

IN THE COURT OF APPEALS OF ALABAMA

No. .....

ROY HUTCHINSON, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each the following separately and severally:

1. The Court erred in over-ruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 8 & 16).

2. The Court erred in over-ruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4, 8 & 16).

3. The Court erred in over-ruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5, 7, 8 & 19).

4. The Court erred in over-ruling Appellant's Motion for a New Trial. (Tr. 9, 10, 12 & 38).

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 42]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 798

ROY HUTCHINSON,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court.

November 2, 1960

Certificate Filed

January 30, 1961

Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 43] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 43a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 44]

IN THE SUPREME COURT OF ALABAMA

Sixth Division

No. .....

Ex Parte: Roy Hutchinson

ROY HUTCHINSON, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein Roy Hutchinson was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Section 1436 of the General City Code of Birmingham 1944, viz:

"Any person who enters into the dwelling house or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be punished as provided in Section 4, provided that this Section shall not apply to police officers in discharge of official duties."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers, whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the city's case, which Motion was [fol. 45] denied. After Judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause, upon the opinion judgment rendered in the case of James Gober vs. City of Birmingham, Sixth Division-797, decided May 30, 1961, which case had a different factual situation from petitioner's case; and there was a different Proposition of Law involved in petitioner's case, not involved in case of Gober vs. City of Birmingham.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

B. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the Laws, all in violation of the Fourteenth Amendment to the United States Constitution.

C. That to warrant a conviction, the evidence must identify the accused, as the person who committed the crime.

The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities, equal protection of the law, and a violation of the Fourteenth Amendment to the Constitution of the United States.

The Court of Appeals erred in failing to rule that to warrant a conviction, the evidence must identify the accused as the person who committed the crime.

Wherefore, your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Court directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete Transcript of Record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

[fol. 46] And petitioner prays for such other, further and additional relief in the premises, as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, By Arthur D. Shores, Attorneys for Appellant.

Duly sworn to by Arthur D. Shores; jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 47] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 48] Application for Rehearing (omitted in printing).

[fol. 49] Order Overruling Application for Rehearing (omitted in printing).

[fol. 50] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN AND FOR JEFFERSON COUNTY

No. 20783

THE CITY OF BIRMINGHAM,

vs.

ROBERT J. KING.

APPEAL BOND: (omitted in printing)

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT J. KING, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Robert J. King, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking and dining purposes and located within the building commonly and customarily known as Loveman's Department Store, located at 216 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM,

VS.

ROBERT J. KING.

MOTION TO STRIKE—Filed October 10, 1960

Comes now Robert J. King, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, [fol. 3] as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the

Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmon Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM,

vs.

ROBERT J. KING.

DEMURRERS—Filed October 10, 1960

Comes now Robert J. King, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the com- [fol. 4] plaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM, Plaintiff,

versus

ROBERT J. KING, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Loveman's, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Loveman's Eating Facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Loveman's, an establishment performing an economic function invested with the public

interest; that defendant peacefully was attempting to obtain service in the facilities of Loveman's in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public; wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in [fol. 6] Birmingham, Alabama to permit defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Loveman's, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in furtherance of this racially discriminatory practice of Loveman's, defendant was arrested on the basis of race or color, under color of law, to enforce racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a

Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the [fol. 7] complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Loveman's, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Loveman's, open to the public, which was denied to him solely because of race or color; that Loveman's, was and is offering, for a price, to serve all members of the public with food; that this public facility Loveman's, is, along with others of a similar nature, per-

forming a necessary service for the public, which in fact, would have to be provided by the state if Loveman's and other like facilities were all to withdraw said services; that having determined to offer said valuable service to the public, Loveman's is required to provide such service in the manner of state operated facilities of a like nature, to wit: That ..... may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

VS.

ROBERT J. KING.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and ad-

judged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert J. King, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 9] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert J. King, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-eight and 75/100 ($48.75)

dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-four and 75/100 ($44.75) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty days, at the rate of 75 cents per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT J. KING, Defendant.

MOTION FOR A NEW TRIAL—Filed November 28, 1960

Now comes the defendant, in the above styled cause, and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to wit the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following separately and severally:

1. That the Judgment of the Court in said case, is contrary to the law.

2. For that the Judgment of the Court is contrary to the facts.

3. For that the Judgment of the Court is contrary to the law in the case.

4. In that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the Judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in over-ruling objections, by the defendant to the introduction of evidence on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

11. The Court erred in overruling defendant's demurrers filed in this cause.

12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

[fol. 11] 13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty, without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this case.

17. That it appeared from the evidence that no owner of the premises involved, had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant for trespass on private property.

20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in the store.

[fol. 12] Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

Appeal Bond to Court of Appeals (omitted in printing).

[fol. 14]

TRANSCRIPT OF EVIDENCE—October 10, 1960
(omitted in printing)

COUNSEL'S NOTE RE RECORD

The parties stipulate that the trial transcript in the *King* case is identical to that in the *Hutchinson* case.

[fol. 34]

TRANSCRIPT OF SENTENCING (omitted in printing)

[fol. 39] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 41]

IN THE COURT OF APPEALS OF ALABAMA

ROBERT J. KING, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 8 & 16)

2. The Court erred in overruling the Appellant's Demurrers filed in this cause, to which the appellant took exceptions. (Tr. 3, 4, 8 & 16)

3. The Court erred in overruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5, 7, 8 & 19)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10, 12 & 38)

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 42]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 799

ROBERT J. KING,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960

Certificate Filed

January 30, 1961

Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 43] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 43a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 44] Petition for Certiorari (omitted in printing).

COUNSEL'S NOTE RE RECORD

The parties stipulate that the petition filed in the Alabama Supreme Court in the *King* case is identical to that filed in the *Hutchinson* case.

[fol. 48] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 49] Application for Rehearing (omitted in printing).

[fol. 50] Order Overruling Application for Rehearing (omitted in printing).

[fol. 51] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
IN AND FOR JEFFERSON COUNTY

No. 20784

THE CITY OF BIRMINGHAM

vs.

ROBERT L. PARKER, JR.

Appeal Bond (omitted in printing).

[fol. 2] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20784

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT L. PARKER, JR., Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Robert L. Parker, Jr., within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking and dining purposes and located within the building commonly and customarily known as J. J. Newberry Co., 200 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20784

CITY OF BIRMINGHAM,

vs.

ROBERT L. PARKER.

MOTION TO STRIKE—Filed October 10, 1960

Comes now Robert L. Parker, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Con-
[fol. 3] stitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20784

CITY OF BIRMINGHAM,

vs.

ROBERT L. PARKER.

DEMURRERS—Filed October 10, 1960

Comes now Robert L. Parker, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

[fol. 4] 3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20784

CITY OF BIRMINGHAM, Plaintiff,

versus

ROBERT L. PARKER, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham

of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Newberry's, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Newberry's First Floor Eating Facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Newberry's, an establishment performing an economic function invested with the public interest; that defendant peacefully was attempting to obtain service in the facilities of Newberry's in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Bir- [fol. 6] mingham, Alabama to permit defendant, a Negro, and other members of defendant's race from enjoying the

access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Newberry's, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in furtherance of this racially discriminatory practice of Newberry's, defendant was arrested on the basis of race or color, under color of law, to enforce racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant, in that it makes it a crime to be on property open to the public after being asked to leave,

because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the [fol. 7] complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: Newberry's and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Newberry's, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Newberry's, open to the public, which was denied to him solely because of race or color; that Newberry's was and is offering, for a price, to serve all members of the public with food; that this public facility Newberry's, is, along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if Newberry's and other like facilities were all to withdraw said service; that having determined to offer said value service to the public, Newberry's is required to provide such service in the manner of state operated facilities of a like nature, to-wit; That Newberry's may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, Oscar W. Adams, Jr., Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

ROBERT L. PARKER JR.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, and it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and

costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert L. Parker Jr., perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 9] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert L. Parker, Jr., perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty and 25/100 ($50.25) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-six and 25/100 ($46.25) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-two days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20784

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT L. PARKER, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of [fol. 11] violating the laws or ordinances of the City of Birmingham, Alabama; in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on privat property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Bill-
[fol. 12] ingsley, Jr., J. Richmond Pearson, Peter
A. Hall, Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open Court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

Appeal Bond to Court of Appeals (omitted in printing).

[fol. 14]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
IN AND FOR JEFFERSON COUNTY

No. 20784

THE CITY OF BIRMINGHAM, a Municipal Corporation,

versus

ROBERT L. PARKER, JR.

Birmingham, Alabama

Transcript of Evidence—October 10, 1960

BEFORE: Honorable George L. Bailes, Judge.

APPEARANCES:

Mr. Watts E. Davis, for the City.

Messrs. A. D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson, for the Defendant.

[fol. 16] Proceedings

Mr. Billingsley: Your Honor, we file the same motion to strike for the defendants and demurrer with the stipula-

tion we will have the same ruling as in the first cases and an exception.

The Court: Yes; that will take care of it.

Mr. Davis: Mr. Myers.

B. R. Myers, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you please state your full name?

A. B. R. Myers.

Q. By whom are you employed, Mr. Myers?

A. The City of Birmingham.

Q. Are you a Police Officer?

A. Yes, sir.

Q. And were you a police officer on March 31, 1960?

A. Yes, sir.

Q. At or about 10:30 on the morning of March 31, did you have occasion to go to Newberry's Store?

A. I did.

Q. Is that in the City of Birmingham?

A. Yes, sir.

Q. Second Avenue and 19th Street, is that correct?

A. Yes, sir.

Q. What part of the store did you go to, Mr. Myers?

A. First floor.

Q. Did you visit the eating area?

A. Yes, sir.

Q. Did you find anything out of the ordinary there at the time?

[fol. 17] A. Two colored males were sitting at the lunch counter.

Q. Do you recall who those two males were?

A. William West and Robert Parker.

Q. Do you see them here in the Courtroom?

A. Yes, sir.

Q. Would you point to them, please, sir?

A. William West with the green coat and Parker in the dark coat, behind the attorneys.

Q. Those are the two boys sitting between counsel at the counsel table?

A. Yes, sir.

Q. Did you have any conversation with either of these two defendants on that occasion?

A. No conversation, no, sir.

Q. Did they have any conversation with anyone employed by Newberry's Store in your presence there on that occasion?

A. Not in my presence, no, sir.

Q. Did you place them under arrest?

A. I did.

Q. Were they told what they were arrested for?

A. They were.

Mr. Davis: That is all.

Cross examination.

By Mr. Hall:

Q. What caused you to go to Loveman's on the morning of 31st of March?

A. It was not Loveman's, Newberry's.

Q. I am sorry.

A. I received a call on the radio.

Q. That came from headquarters?

A. Yes, sir.

Q. When you got to the store you proceeded immediately to the eating counter?

A. Through the front door. The lunch counter is right at [fol. 18] the front door.

Q. Did you consult with any of the store officials at all?

A. I did not personally.

Q. Did you have occasion to talk with any of the store officials there at Newberry's?

A. I did not.

Mr. Davis: I didn't hear you.

The Witness: I did not.

Q. What occasioned the arrest of these two boys Parker and West, why did you arrest them?

A. Trespassing after warning.

Q. Why did you do it? Did you decide they were trespassing after warning?

A. I did not.

Q. Who did?

A. It was my understanding my partner had received a complaint from Mr. Stallings.

Q. I want to know who you received one from?

A. I didn't receive one personally.

Q. What occasioned the arrest? You did place them under arrest, didn't you at that time?

A. Yes.

Q. Why?

A. Because they had been warned to leave the lunch counter.

Q. How do you know?

Mr. Davis: We object to that, if the Court pleases, to arguing with the witness. He has already answered.

Mr. Hall: If Your Honor pleases, we are not arguing. We are trying to get a material aspect of the case. I understand that somebody who owned some property claims this defendant refused to leave after they were warned to do so and an official of the City of Birmingham then arrested them and they are being tried. The officer has stated nobody complained to him: I want to know who did complain and where?

[fol. 19] Mr. Davis: I believe the record did show he received a report by radio to go to Newberry's to make an arrest.

Mr. Hall: If Your Honor pleases counsel is testifying. The officer didn't testify to that. He said he got an order on the radio to go down to Newberry's. Now if he did get a complaint by radio we would like for him to say so on the stand. We want to know why he arrested the two boys at the time that he did.

The Court: I don't think you can properly go into mental processes, but you can ask him what he said and what was said to him.

Q. No official at Newberry's Store—

The Court: I don't know that.

Mr. Hall: If Your Honor pleases, that was addressed to the witness.

Q. Officer Myers, did I understand you to say that no official at Newberry's complained to you?

A. I did not receive the complaint personally.

Q. But you were the arresting officer?

A. One of the arresting officers.

Q. Did you know of any complaint at that time?

A. I did.

Q. You did?

A. Yes.

Q. How did you know that?

A. Officer Stoddard had received a complaint.

Q. From whom?

A. Mr. Stallings.

Q. Who is Stallings?

A. At Newberry's Department Store.

Q. I beg your pardon?

A. At Newberry's Department Store.

Q. Is he the Manager there?

A. I don't know what his capacity is.

Q. You don't know he is employed there?

[fol. 20] A. It was my understanding that he was.

Q. You don't know whether he is employed or not?

A. I don't know.

Mr. Hall: That is all.

Mr. Davis: Mrs. Gibbs.

Mr. Shores: Your Honor, I believe we asked for the rule when we started?

Mr. Davis: That was in another case.

Mr. Shores: We would like to have it.

The Court: You may invoke the rule.

(Witnesses placed under the rule.)

Mr. Hall: If Your Honor please, may we at this time ask for the rule in all of the cases? We were under the impression that the rule had been invoked in all of the cases.

The Court: All right.

Mrs. L. B. Gibbs, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you please state your full name?

A. Mrs. L. B. Gibbs.

Q. By whom are you employed or by whom were you employed on March 31, 1960?

A. J. J. Newberry Company.

Q. Are you still employed there?

A. Yes, I am.

Q. Do you recall the occasion about the middle of the morning on March 31, some disturbance or commotion there at the store?

A. Yes, sir.

Q. Did two colored boys come in and have a seat at the luncheonette or dining area in the store?

A. Yes, they did.

[fol. 21] Q. What is your position with the store, Mrs. Gibbs?

A. I am a Store Detective.

Q. Who were the two boys, if you remember on that occasion?

A. William West and Robert Parker.

Q. Do you see them in the Courtroom?

A. Yes, sir.

Q. Can you point them out?

A. I think that is West with the green jacket or green coat and Parker in the dark coat I believe.

Q. Those are the two boys sitting behind their attorneys?

A. Yes, sir.

Q. What conversation, if any, did you have with the two defendants on that occasion?

A. I went over to the lunch counter when I saw them sitting there and identified myself and told them that they would have to leave, they couldn't be served there, but if they would go to the fourth floor we have a snack bar for colored there and they would be served on the fourth floor.

Q. What did they say, if anything?

A. They said they were not leaving, that they were not violating any law.

Mr. Davis: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Mrs. Gibbs, are you still employed by Newberry's?

A. I am.

Q. The lunch counter, were they seated at the time you saw them?

A. The luncheonette on the first floor.

Q. Is that lunch counter open to Newberry's customers?

A. It is open to white customers.

Q. Only to white customers?

A. That is right.

[fol. 22] Q. You have another lunch counter on the premises?

A. We have another luncheonette in the basement of the store and then we have this for colored people on the fourth floor.

Q. A luncheonette in the basement of the store. Is that open to Newberry's customers also?

A. White customers.

Q. White customers only?

A. Yes, sir.

Q. That is the only requirement that they be white?

A. Yes.

Q. And the fourth floor, you have another luncheonette which is open to Newberry's customers if they are colored?

A. Yes, sir.

Q. Do you serve only colored people at that luncheonette or do you serve all?

A. Only colored.

Q. That is true today?

A. Yes.

Mr. Hall: That is all.

Mr. Davis: Mr. Stallings.

LLOYD L. STALLINGS, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state your full name, please, sir?
A. Lloyd L. Stallings.
Q. By whom are you employed, Mr. Stallings?
A. J. J. Newberry Company.
Q. In what capacity?
A. Assistant Store Manager.
Q. Were you so employed on March 31, 1960?
A. I was, yes, sir.
Q. About the middle of the morning did you have oc- [fol. 23] casion to visit the area of the luncheonette or soda fountain on the first floor of Newberry's?
A. I did.
Q. Was there anything unusual there at the time, sir?
A. There was two, well I was called down there, someone called me from the office and said there was a lot of confusion at the lunch counter, would I come down. And so I came down and two colored men were sitting there.
Q. Did you have any conversation with them relative to it?
A. Well I asked them, I said, "You know you can't do this." I said, "We have a lunch counter up on the fourth floor for colored people only. We would appreciate it if you would go up there."
Q. What was their response to that, Mr. Stallings?
A. Well one of them, I don't know which one said, "Well we have our rights."
Q. Did they indicate they were not going to leave?
A. I saw they were not going to leave. Well they didn't say they were not going to leave, but they kept sitting there and said, "We have our rights." That was the answer that they gave.

Mr. Davis: That is all.

Cross examination.

By Mr. Hall:

Q. Mr. Stallings, did you call the police?

A. I did not.

Q. Did any other official at Newberry's call the police?

A. Someone, now I don't remember who this person was, but someone said to me that we called the police. I don't know who it was. I don't remember that.

Q. You were there when the police came in, were you not?

A. Yes, I was.

Q. Did you make a complaint to the police?

A. I didn't, no.

Q. Did anyone make a complaint in your presence for Newberry's?

A. I don't remember if they did, no, sir.

Q. Are you still employed by Newberry's?

[fol. 24] A. I am.

Q. Subsequent to that time prior to the first trial in City Court did you make a complaint to the City of Birmingham against these two defendants?

A. I didn't no.

Q. Do you know that anyone representing J. J. Newberry's has?

A. I don't know whether they have or not.

Q. Mr. Stallings, is Newberry a National chain organization?

A. Yes, it is.

Mr. Davis: We object to that if the Court pleases.

The Court: That is all right. Leave it in.

Q. Is it engaged in selling merchandise both hard goods and soft and otherwise to the public generally?

A. Yes, si.

Q. Do you customarily take full-page advertising in local newspapers and other advertising media?

A. I don't understand the question.

Q. Do you usually or ordinarily advertise your merchandise for sale in newspapers to the public generally?

A. Yes, sir.

Q. On those occasions do you also advertise your lunchroom?

A. No, generally we don't.

Q. Have you ever advertised your lunch counter?

A. Maybe we have at some time or another. I don't know. But we don't make a practice. I don't remember a specific time of doing that.

Q. Do you have signs at your lunch counter advertising specials and prices?

A. Yes, we do.

Q. Is there any sign at your lunch counter which indicates whether or not it is for white or colored?

A. I don't believe there is a sign that says for white only. We have one at the colored luncheonette that says for colored only.

Q. Where is that?

[fol. 25] A. On the fourth floor.

Q. On the fourth floor?

A. Yes.

Q. And this occurred on the first floor?

A. That is right.

Q. Are there other departments on the first floor besides the luncheonette?

A. Oh, yes.

Q. Merchandise generally?

A. Yes.

Q. And white and colored persons generally shop on the first floor?

A. Yes.

Q. That is done ordinarily, is that true?

A. Yes.

Q. On the part of the buying public?

A. Yes.

Q. Have you worked at Newberry's Store at any other place other than Birmingham?

A. I have not.

Q. Have you visited any other J. J. Newberry Stores?

A. Oh, a time or two I have, yes, sir.

Q. Does Newberry have a policy of serving and not serving persons of another race or particular color?

A. I don't have anything to do with the making of the policies of Newberry Company.

Mr. Davis: We object as incompetent, irrelevant and immaterial as to what policy they may have in other parts of the country

Mr. Hall: If Your Honor pleases, I think it is very material. The meat in this coconut is whether or not Newberry's Department Store has complained or the City of Birmingham. It is our theory of the case it is necessary for the owner of the premises to be complaining and we are trying to find out if they have complained. Mr. Stallings who is Assistant Manager says he has not complained. [fol. 26] Mrs. Gibbs didn't testify to any complaint. The only person the officer knows of no complaint except he thinks some other officer might have had one by radio. Now we want to know who is prosecuting these defendants. If it is Newberry's policy to serve persons at different counters we would like to know if, I think it is material.

The Court: Can we adjudicate cases here on persons or corporations' policies?

Mr. Hall: Well I don't know sir.

The Court: I do. We can't. I pointed that out this morning. We are not dealing with policies of stores. We are dealing with a City Code.

Mr. Hall: If Your Honor pleases, as we understand the ordinance involved, in order for it to be brought to bear on a defendant our theory was it would be necessary for some private persons to bring in the City Police ordinarily under the circumstances. It is not one of those ordinances which is against the peace and dignity of the State.

The Court: What would we do with Mrs. Gibbs' testimony?

Mr. Hall: I don't know, sir. Mrs. Gibbs testified she told them they couldn't be served there, but that does not necessarily mean they were told to leave.

The Court: I think she was very smart because when they said they were not leaving she didn't tell them to leave.

Mr. Hall: I don't recall that, but I was trying to get into what the situation is. As I understand the particular ordinance, it is possible I am misinformed and don't know

what it means, but as I understand it, if a person is on my premises ordinarily a policeman cannot decide whether or not they should be arrested unless I make a complaint. Now if they come on at my invitation and I tell them to leave and they don't and I summon the police I should come to Court and say I did, that I invited them and then I withdrew my invitation. Mr. Stallings has testified to newspaper advertisements inviting the general public to Newberry's Store and there is no basis of color in the advertisements. Now colored and white people shop in Newberry's, in the various departments as he testified to and [fol. 27] there is no racial discrimination, racial designation on the first floor. We are trying to find at what point the invitation was withdrawn, on whose complaints were these men arrested and whose prosecution they are being prosecuted. Now if we are proceeding under the Trespass Ordinance, that is the way we understand it. If it is one of the ordinances where the policeman himself can decide that is a different matter.

The Court: Is there any question before the Court now?

Mr. Hall: If Your Honor pleases we had asked Mr. Stallings about Newberry's policy.

The Court: That is not competent.

Mr. Hall: We want an exception. That is all Your Honor.

The Court: Anything further?

Redirect examination.

By Mr. Davis:

Q. They didn't turn out any lights on this occasion, did they Mr. Stallings?

A. I don't remember that we did, no.

Q. They asked you about advertising. They didn't advertise that the white and colored sat at the same tables and counters in their advertising when they did advertise their luncheonettes did they? Would you answer that for the record, please, sir?

A. No, we did not.

Mr. Davis: That is all.

Recross-examination.

By Mr. Hall:

Q. Mr. Stallings, you didn't advertise that white and colored are served at the same notions counter, did you?

A. No.

Q. But you did serve them at the same counter?

A. We did.

Q. You have been doing it since you have been at Newberry's?

A. Yes, sir.

Q. You do it today?

A. Yes, sir.

[fol. 28] Q. No Negro has been arrested for buying at a notion counter alongside a white person, have they?

A. Not that I know of.

Mr. Hall: That is all.

Mr. Davis: That is our case.

Mr. Adams: Judge, we would like to make a motion to exclude in the case of Robert Parker, a written motion in his particular case, and oral motion being the same as a written motion in the case of Robert Parker in the case of William West, and the basis of our motion being the same as previous, and also in this particular case the fact that there was invitation to the public generally to trade at Newberry's, that the eating facilities that the defendants were sitting in had no signs indicating that there was any segregation of the races, and furthermore, in addition to that, there is no proof coming from anybody in any official capacity at Newberry's that they were warned to leave and that they would be guilty of a crime if they stayed. There is no evidence in the record to the effect that the warning was given. I think the Judge observed after they said they were going to stay that Mrs. Gibbs tactfully did not state for them to go after they said they were going to stay, so I do not believe that the establishment has been made. There was some vague reference to what Mr. Stallings would testify to but when he got on the witness stand he didn't testify. He didn't call for the police officer arrest the people. So the case falls down on just the lack of proof of violation of the ordinance as well as falling

down on the Constitutional grounds also. So therefore in these two defendants' cases the City hasn't made out a case and they should be discharged obviously.

The Court: Same ruling as in the other cases.

Mr. Adams: We except.

William West, called as a witness, having been first duly sworn, testified as follows:

[fol. 29] Direct examination.

By Mr. Shores:

Q. Will you state your full name?

A. My name is William West.

Q. William did you accompany Parker to Newberry's on this date of March 31?

A. No, sir.

Q. Did you happen to go to Newberry's on that particular date?

A. I did.

Q. Who did you meet after you got there?

A. I met Parker, Robert Parker.

Q. Robert Parker. You met Robert Parker there?

A. Yes, sir.

Q. Did you make any purchases while you were at Newberry's?

A. I did.

Q. What did you purchase?

A. I bought some paper and some small comic books.

Q. Small comic books?

A. The novel type is what I mean.

Q. After you made the purchases what did you do?

A. Well by that time Parker and I was walking around in the store and I said, "Let's go over here and get something to eat."

Q. Did Parker buy anything?

A. I don't know. I saw him with a package. I don't know what was in it.

Q. In other words, you met him there in the store?

A. In the store.

Q. You didn't go together?
A. No, sir.
Q. You didn't go shopping together?
A. No, sir.
Q. He was in the store when you first met him?
A. When I met him he was.
Q. You invited him to go with you to get something to eat?
A. To get something to eat, yes, sir.
Q. Where did you go?
[fol. 30] A. We went to the lunch counter.
Q. Did this lunch counter have any designation as to race?
A. Well I didn't see any sign or anything that would indicate it.
Q. Was anybody else sitting at the lunch counter?
A. Yes, sir, there was several white people, ladies and gentlemen that were sitting there.
Q. You and West, I mean Parker are Negroes?
A. That is right.
Q. Were the white people eating?
A. They were. Some of them were drinking coffee.
Q. Did you order anything while you were sitting there?
A. No, sir. The waitress never did come and see what we wanted.
Q. Did anybody ever come and invite you to leave?
A. No, sir.
Q. Did anybody ever tell you to leave?
A. No, sir.
Q. Did any person in connection with the store tell you that you could be served elsewhere in the store?
A. Yes, sir.
Q. Do you recall just what conversation took place at that time?
A. No, not exactly, but a lady came up to us and said, "We have a lunch counter for colored people in some other department of the store."
Q. But did she tell you to leave that lunch counter?
A. No, sir, she didn't or I don't recall it.

Mr. Davis: I didn't hear you.

A. I said she didn't or I don't recall it.

Q. Do you recall whether or not the white people ordered anything and were served while you were sitting there?

A. Well I don't recall but I do remember some of them were eating and drinking.

Q. Eating and drinking?

[fol. 31] A. Yes, sir.

Q. Did you see the waitress waiting on anybody?

A. No, I didn't.

Q. When did you first notice or were first approached by a police officer?

A. Well it was after the lady had talked to us and another gentleman. After he finished talking to us we probably stayed there about well, three or four minutes and I happened to look around and saw some officers coming.

Q. Did the officers make any statements to you when they first approached you?

A. No, sir.

Q. Did they arrest you?

A. Well after they had gotten the people up they did.

Q. He ordered the other people up?

A. He was doing his hand that way. I assumed he was doing it for them to get up.

Q. He was making motions towards the white people?

A. That is right. He did like that.

Q. Did he motion you up?

A. No.

Q. After he had motioned the white people away did all of them leave?

A. No, all of them didn't leave.

Q. Now what did the officer say to you, if anything?

A. After he started motioning the white people away we started to get up and when we started to get up one got me in the back or somewhere in behind.

Q. Before the officer caught you in the back had any official or any officer in the store ordered you to leave that counter?

A. Not to leave.

Q. After the officer motioned the other people to leave you attempted to leave?

A. After I saw him motioning other people up I said, [fol. 32] "Let's go." And we started to get up.

Q. And when you attempted to get up that is the time that the officer caught you?
A. Yes, sir.
Q. Caught you in your pants?
A. Somewhere behind. I don't know exactly.
Q. Did he make any statement when he caught you?
A. No.
Q. Did he say you were under arrest?
A. Well, yes.
Q. When did he tell you you were under arrest?
A. After we had gotten outside of the store.
Q. Did he tell you what you were being arrested for?
A. If he did I didn't hear it.

Mr. Shores: That is all.

Cross examination.

By Mr. Davis:

Q. You expected to be arrested when you went there, didn't you Parker?
A. I am not Parker.
Q. Pardon, West.
A. No, I didn't. I expected to get served because they had served at some counters.
Q. That was not what they told you at the meeting the day before.

Mr. Hall: If Your Honor pleases, we object to any reference to any meeting.
The Court: Leave it out.

Q. I believe you say you just happened to meet Parker down there?
A. That is right.
Q. Parker didn't know you were coming and you didn't know Parker was coming?
A. I didn't.
[fol. 33] Q. I beg your pardon?
A. I didn't know it.
Q. What time were you supposed to meet there?
A. I didn't know whether Parker would be there or not.

Q. You all talked about it the day before, didn't you?

A. Talked about what?

Q. About the thing you were going to do at Newberry's, is that right?

Mr. Hall: We object to that, Your Honor.

The Court: I think in the light of his statement it would be competent to ask him if they had said anything about it the day before.

Q. You were at Reverend Shuttlesworth's house the day before?

Mr. Hall: We object to whether he was at Reverend Shuttlesworth's house or at any other place the day before.

The Court: Let him answer whether he was there at Shuttlesworth's the day before.

Mr. Hall: If Your Honor pleases, we want an exception to the ruling. Our objection is predicated on the fact that the question is incompetent and irrelevant.

The Court: Let the ruling stand.

Q. The day before you were arrested were you at Shuttlesworth's house?

A. Well I have been to Reverend Shuttlesworth's church several times.

Q. Did I ask you that, Did I ask you how many times you had been there?

A. Been where?

Mr Davis: Would it be asking the Court too much to ask the witness to answer the question.

The Court: Reshape it.

Mr. Davis: I beg your pardon?

The Court: Recast the question.

[fol. 34] Q. Were you at Reverend Shuttlesworth's house on March 30, 1960?

A. March 30, 1960?

Q. The day before this incident?

A. No, I was not there the day before.

Q. Do you understand we have got a perjury law here?

Mr. Billingsley: Your Honor, we are going to object to that.

Q. I have some statements and I am going to ask him if he was not at Reverend Shuttlesworth's house the day before. Is that your statement. You were not at this house on March 30, 1960?

A. In the daytime?

Q. In the daytime or nighttime?

A. I was there that night.

Q. There is 24 hours in the day.

A. I was there that night.

Mr. Hall: If Your Honor pleases, we are going to object to the way counsel is carrying on his cross-examination as argumentative and it is intimidating the witness.

The Court: The Court thinks this lad has been intimidated elsewhere, and made a tool elsewhere, made a dupe of elsewhere under this evidence.

Q. Was it not prearranged at Shuttlesworth's house on March 30, 1960 that you were to meet Parker at Newberry's Store at a given time on March 31, 1960?

Mr. Hall: If Your Honor pleases, we would like to object for the record.

The Court: Let him answer it. Overruled.

Mr. Hall: We except.

The Witness: Repeat the question.

The Court: Read the question.

(Question read as follows: Was it not prearranged at Shuttlesworth's house on March 30, 1960 that you were to meet Parker at Newberry's Store at a given time on [fol. 35] March 31, 1960?)

A. Well, I don't recall any such.

Q. Whereabouts in the store did you run into Parker, West?

A. I believe it was, I believe it was on the first floor. I am not sure.

Q. Somebody wrote on a piece of paper the name of every store you boys were to go to. Is that not correct? At this meeting you attended?

Mr. Hall: We object to that on the same grounds.

A. Well, I didn't see any paper.

Q. I didn't ask you if you saw it. I said somebody wrote on a piece of paper where each one of you were to go, isn't that correct?

A. I didn't see that there.

Q. Did you tell Detective Pierce that you did?

A. Tell him that somebody wrote on a piece of paper?

Mr. Hall: We object to that. Proper predicate has not been laid.

The Court: That is a predicate itself.

Mr. Hall: We object to the question, we take an exception.

The Court: Will you answer the question.

A. I don't remember telling him.

Q. Do you remember talking to Detective Pierce the day after the sit-ins?

A. Yes, sir.

Q. After you had been in jail?

A. I do.

Mr. Davis: That is all.

Mr. Shores: That is all, come down. We rest, Your Honor.

Mr. Davis: That is all for the City.

[fol. 36] Transcript of Sentencing (omitted in printing).

* * * * * * * * *

[fol. 41] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 43]

IN THE COURT OF APPEALS OF ALABAMA

No. .....

ROBERT L. PARKER, JR., Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following, separately and severally:

1. The Court erred in over-ruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 8 & 16).

2. The Court erred in over-ruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4, 8 & 16).

3. The Court erred in over-ruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling the Appellant took exceptions. (Tr. 5, 7 & 28).

4. The Court erred in over-ruling Appellant's Motion for a New Trial. (Tr. 9, 10, 12 & 40).

5. The Court erred in refusing to permit the witness, Lloyd L. Stalling, Assistant store manager of J. J. Newberry Company, to testify as to the racial policies of aforesaid company, in service for persons of different races, to which ruling Appellant took exceptions. (Tr. 25-27).

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

[fol. 44] Certificate of Service (omitted in printing).

[fol. 45]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 800

ROBERT L. PARKER, JR.

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 46] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 46a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 47]

IN THE SUPREME COURT OF ALABAMA

No. 756 Sixth Division

EX PARTE: ROBERT L. PARKER, JR.

ROBERT L. PARKER, JR., Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr. and J. Richmond Pearson and respectfully petitions this Honorable Court to review, revise and reverse and hold for naught that certain judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein Petitioner was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Section 1436 of the General City Code of Birmingham, viz:

"Any person who enters into the dwelling house or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be punished

as provided in Section 4, provided that this Section shall not apply to police officers in discharge of official duties."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the prosecution, as applied to Appellant, constituted an [fol. 48] abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence at the close of the city's case, which Motion was denied. After Judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause, upon the opinion judgment rendered in the case of James Gobe, vs. City of Birmingham, Sixth Division 797, decided May 30, 1961, which case had a different factual situation from petitioner's case; and there was a different proposition of law involved in petitioner's case, not involved in case of Gober vs. City of Birmingham.

8. That the Proposition of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in Violation of the Fourteenth Amendment to the United States Constitution.

B. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the Law, all in violation of the Fourteenth Amendment to the United States Constitution.

C. That to warrant a conviction, the evidence must identify the accused, as the person who committed the crime.

The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the priviliges (sic) and immunities, equal protection of the law, and a violation of the Fourteenth Amendment to the Constitution of the United States.

The Court of Appeals erred in failing to rule that to warrant a conviction, the evidence must identify the accused as the person who committed the crime.

Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Court directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete Transcript of Record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that [fol. 49] this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or Judgment as should have been rendered by the Court of Appeals.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certifi-

cate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises, as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, By J. Richmond Pearson, Attorneys for Appellant.

Duly sworn to by J. Richmond Pearson, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 50] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 51] Application for Rehearing (omitted in printing).

[fol. 52] Order Overruling Application for Rehearsing (omitted in printing).

[fol. 53] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20791

THE CITY OF BIRMINGHAM,

vs.

WILLIAM WEST.

APPEAL BOND (omitted in printing).

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20791

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

WILLIAM WEST, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that William West, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof did go or remain on the premises of another, said premises being the area used for eating, drinking and dining purposes and located within the building commonly and customarily known as J. J. Newberry Co., 200 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20791

CITY OF BIRMINGHAM,

vs.

WILLIAM WEST.

MOTION TO STRIKE—Filed October 10, 1960

Comes now William West, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, [fol. 3] speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20791

CITY OF BIRMINGHAM,

vs.

WILLIAM WEST.

DEMURRERS—Filed October 10, 1960

Comes now William West, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which support the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

[fol. 4] 2. That the complaint, affidavit or information upon which this cause is based is insufficient to support

prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

WILLIAM WEST.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant makes oral motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine

Q. Tell the Court just what happened after you seated yourselves at the lunch counter?

A. Well we sat down and waited for a waitress to serve us and one came up and said, "I'm sorry I can't serve you." There were several waitresses behind the counter so we waited until another one came up and offered to serve us and that is all.

Q. Were you ever served?

A. We were never served.

Q. Did anybody come up and ask you to leave?

A. No one ever asked us to leave.

Q. Did this Mrs. Evans speak to you at all?

[fol. 22] A. Well I have never seen her until the night of the last trial was the first time I saw her.

Q. Well did anybody ask you to leave? Did anybody in connection with the store ask you to leave?

A. Not unless some of the policemen were connected with the store.

Q. Were any white persons seated at the lunch counter?

A. There were several.

Q. Were they eating?

A. They were.

Q. Were they being served?

A. They were being served until we came and then they began to close the counter and ordered these white people away and one refused to leave and then he was forced by the policeman to leave his seat. He was sitting directly next to us. Most of them remained until they were ordered away or finished their food.

Q. Do you know whether or not this white man that remained was arrested?

A. He was not.

Mr. Davis: We object to that as incompetent, irrelevant and immaterial.

The Court: Well if he could know, all right.

Q. Did you see any white people arrested?

A. There were none arrested to my knowledge.

Q. Now did you see Officer Casey the officer that testified?

A. I did.

Q. When did you first see him?

A. When we were taken to the patrol car on the outside of the store. He was at the patrol car and he began to question us, asking our name and so on and at the time we asked him what we were charged with and he made statements to the effect we just had to do it and something of a similar nature.

Q. Was he the officer that accosted you in the store?

A. No, he was not the officer that approached us in the [fol. 23] store. The officer that approached us in the store in my way of thinking probably was a superior officer because he had two bars on his shoulder, something similar to a Captain in the Army or Armed Services, and he was the one that approached us and he asked us to leave and said in this respect, "Let's go," and I asked him whether or not we were under arrest and he said, "Yes, you are under arrest," and before we could say anything else someone had grabbed us in back of the pants and was pushing us out of the store.

Q. Did he tell you at that time what you were being arrested for?

A. Well I didn't get a chance to ask him.

Q. But you were told when you were placed in the patrol car?

A. I was told by Officer Casey. He was in the patrol car. I think that is his name, the officer that was on the stand preceding me.

Q. Were there any signs designating whether or not this lunch counter was for white or colored?

A. No, the only signs I could visualize or saw were signs more or less of an inviting nature, such as banana splits twenty-five cents, hamburgers, the price of the food that you were able to purchase at the counter. There were no signs designated any color or any special type of customers.

Q. Were you refused, did anybody refuse to sell you anything at these other counters when you attempted to make other purchases?

Mr. Davis: We object to that as incompetent, irrelevant and immaterial.

The Court: That is all right, he can answer.

A. No, we were not refused at any of the other counters.

Mr. Shores: That is all.

Cross examination.

By Mr. Davis:

Q. You had been told to expect the arrest, hadn't you?

A. No, sir.

[fol. 24] Q. The day prior to this occasion?

Mr. Pearson: Your Honor, we object as immaterial, irrelevant and outside of all of the issues.

The Court: He said he was not.

Q. Well you had been told to stay there until you were arrested?

A. I had not been told to stay there and I had not been told to be arrested.

Mr. Pearson: We object to that.

Q. What was the answer?

A. I had not been told to stay there nor had I been told to stay there until I was arrested.

Q. Why didn't you leave when they told you to get out of the place or that you would not be served?

A. Well I couldn't leave. The officers had hold of me. If I had run probably they would have shot me.

Q. You say the waitress came up and told you you couldn't be served and you sat there waiting for some other waitress to come up and serve you.

Mr. Pearson: If Your Honor pleases, we object. The witness has not testified to anything that counsel said. He said one waitress told him that she couldn't serve him.

The Court: Well the record speaks for itself.

Mr. Pearson: But this is an argumentative method of cross-examination and we object to that.

Q. I will ask you if I understood you correctly to say that a waitress came to your table and said, "I am sorry but I can't serve you," did you testify to that?

A. I said that a waitress came to where we were sitting

at the counter, and not the table, and said, "I am sorry I can't serve you," not "we" but "I".

Q. What did you take that to mean, that someone else was going to serve you?

A. I really expected service. I had been served prior to [fol. 25] coming to the counter.

Q. You didn't expect that the day before when you all were at Shuttlesworth's house?

A. Are you referring to more than one?

Q. Were you present at Shuttlesworth's house with the other defendant on the day before?

A. When you say the other—who are you referring to?

Mr. Hall: If Your Honor pleases, we object to bringing anybody else into this. Jesse Walker is charged under the count here of trespass after warning and no others are involved and any question as to others not before the Court at this time is irrelevant and immaterial.

The Court: Leave it out.

Q. Did you meet with a group of other defendants on March 30 at Reverend Shuttlesworth's?

Mr. Hall: If Your Honor pleases, we object. Jesse Walker is charged with an offense cognizable under the laws of the City of Birmingham and no others involved. He has admitted he was at the place.

The Court: Let him answer.

Mr. Hall: We take an exception.

A. I did not meet with any group of boys at any other place.

Q. You were present this morning when Gober and Davis testified that there was a meeting. You were not at that meeting?

Mr. Hall: Your Honor, we are going to object to that. He is going into another case which we have tried for purpose of impeachment.

Q. I withdraw the question and ask you this. Did you at any time meet with Reverend Shuttlesworth, Reverend Billups and in the same room during the discussion were James A. Davis, Roy Hutchinson, R. L. Parker and others?

Mr. Hall: If Your Honor pleases, we object to any questions about a meeting. We don't see where it is material, Your Honor, under the charge and under the prosecution, [fol. 26] under the facts, any meeting is immaterial to the issues involved here. The only question is did this man go on somebody else's premises and remain there after he was told to leave, and if he did whether or not he was justified in doing it under the law and under our Constitution. No meeting has any material bearing on the issues here.

Mr. Davis: If the Court pleases I might be able to resolve the question. This witness has testified that he did not expect to be arrested. Supposedly at a meeting or a day prior they were told they would be arrested and I just want to know his story. I think it is within the proper scope of cross-examination.

Mr. Hall: If Your Honor pleases if this man is guilty of an infraction of the law whether or not he expected to be arrested would be immaterial, as ignorance of the law would be no excuse. Whether he was told to go or not told to go is not material to the issues here, relating to something outside of the issues involved in this case of the City of Birmingham against Jesse Walker. The only thing involved is whether he went to Woolworth's and stayed there after they closed the counter and refused to leave when the lady told him to leave, and if she had the authority to tell him to leave, and if in doing that he is guilty of a crime. No meeting is material.

The Court: Sustain the objection.

Q. How many officers came into the store?

A. In number?

Q. Yes.

A. There were at least I would say ten. I do not know the exact or definite number.

Q. Now you say Officer Casey was not one of the ten that came in?

A. I said I did not see Officer Casey or he did not come in contact with me personally until I had left the store and was on the outside in a patrol car.

Q. Well as I understand it you don't know whether

[fol. 27] Officer Casey was inside talking to Mrs. Evans or not?

A. There is a possibility he could have been somewhere in the store talking to Mrs. Evans.

Mr. Davis: That is all.

Mr. Shores: That is all. Thank you. That is our case, Your Honor, we rest.

The Court: Are you going to defer summations until later?

Mr. Shores: Yes, sir.

[fol. 28] Transcript of Sentencing (omitted in printing).

[fol. 33] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 35]

IN THE COURT OF APPEALS OF ALABAMA

JESSE WALKER, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 8 & 16)

2. The Court erred in overruling Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4, 8 & 16)

3. The Court erred in overruling the Appellant's Motion to Exclude the Evidence filed in this case, to which ruling Appellant took exceptions. (Tr. 5, 7, 8 & 20)

4. The Court erred in overruling Appellant's motion for a New Trial. (Tr. 9, 10, 11 & 32)

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 36]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 803

JESSIE WALKER,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the

Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 37] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 37a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 38] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

No. 759 Sixth Division

EX PARTE: JESSE H. WALKER

JESSE H. WALKER, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

[fol. 39]

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein Jesse H. Walker was Appellant and the City of Birming-

ham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said Cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that the cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Section 1436 of the General City Code of Birmingham 1944, viz:

> "Any person who enters into the dwelling house or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be punished as provided in Section 4, provided that this Section shall not apply to police officers in Discharge of official duties."

[fol. 40] 4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers, whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After Judgment and sentence, Petitioner filed a

Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause, upon the opinion judgment rendered in the case of James Gober vs. City of Birmingham, Sixth Division—797, decided May 30, 1961, which case had a different factual situation from petitioner's case; and there was a different Proposition of Law involved in petitioner's case, not involved in case of Gober vs. City of Birmingham.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

[fol. 41] B. That the Ordinance and Complaint, the basis of the Prosecution, as applied to petitioner, a Negro Citizen of the State of Alabama and of the United States, constitute an abridgement of his privileges and immunities, and a denial of the equal protection of the Laws, all in violation of the Fourteenth Amendment to the United States Constitution.

C. That to warrant conviction commission of a violation of the ordinance must be clearly proved.

The Court of Appeals erred in failing to rule that the Conviction of petitioner was a violation of due process of law, and abridgement of his privileges and immunities and a denial of equal protection of the law, all in violation of the Laws and Constitution of Alabama and the Fourteenth Amendment to the Constitution of the United States.

The Court of Appeals erred in failing to rule that to warrant a conviction, the evidence must clearly show a violation of the ordinance involved.

Wherefore, your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Court directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete Transcript of Record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause my be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

[fol. 42] And petitioner prays for such other, further and additional relief in the premises, as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, By Peter A. Hall, Attorneys for Appellant.

Duly sworn to by Peter A. Hall, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 43] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 44] Application for Rehearing (omitted in printing).

[fol. 45] Order Overruling Application for Rehearing (omitted in printing).

[fol. 46] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20793

THE CITY OF BIRMINGHAM,

vs.

WILLIE J. WILLIS.

APPEAL BOND (omitted in printing)

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20793

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

WILLIE J. WILLIS, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Willie J. Willis, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as F. W. Woolworth Co., 219 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20793

CITY OF BIRMINGHAM,

vs.

WILLIE J. WILLIS.

MOTION TO STRIKE—Filed October 10, 1960

Comes now Willie J. Willis, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as [fol. 3] a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes and abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citi-

zen of the United States, constitutes a denial of due process and equal protection of law; in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20793

CITY OF BIRMINGHAM,

vs.

WILLIE J. WILLIS.

DEMURRERS—Filed October 10, 1960

Comes now Willie J. Willis, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any [fol. 4] offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, in (sic) unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due pr cess of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

CITY OF BIRMINGHAM,

VS.

WILLIE J. WILLIS.

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who proseutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, and it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant makes oral motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred

($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Willie J. Willis, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 6] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Willie J. Willis, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty-one ($51.00) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-seven ($47.00) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-three days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is

ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 7]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20783

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

WILLIE J. WILLIS, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The Court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, [fol. 8] Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birming-

ham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on private property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Bill-
[fol. 9] ingsley, Jr., Peter A. Hall, J. Richmond
Pearson, Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open Court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted.]

Appeal Bond to Court of Appeals (omitted in printing).

[fol. 11]

TRANSCRIPT OF EVIDENCE—October 10, 1960

(omitted in printing.)

COUNSEL'S NOTE RE RECORD

The parties stipulate that the trial transcript in the *Willis* case is identical to that in the *Walker* case.

[fol. 25] Transcript of Sentencing (omitted in printing).

[fol. 30] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 32]

IN THE COURT OF APPEALS OF ALABAMA

WILLIE WILLIS, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceeding, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 5, & 13)

2. The Court erred in overruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4, 5 & 13)

3. The Court erred in overruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5 & 17)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 6, 9 & 29)

Oscar W. Adams, Jr., Arthur D. Shores, J. Richmond Pearson, Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 33]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 806

WILLIE J. WILLIS

v.

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 34] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 34a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 35] PETITION FOR CERTIORARI (omitted in printing).

COUNSEL'S NOTE RE RECORD

The parties stipulate that the petition filed in the Alabama Supreme Court in the *Willis* case is identical to that filed in the *Walker* case.

[fol. 39] Order Denying Petition for Certiorari (omitted in printing).

[fol. 40] Application for Rehearing (omitted in printing).

[fol. 41] Order Overruling Application for Rehearing (omitted in printing).

[fol. 42] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 44]

SUPREME COURT OF THE UNITED STATES

No. 694, October Term, 1961

JAMES GOBER, et al., Petitioners,

vs.

CITY OF BIRMINGHAM.

ORDER ALLOWING CERTIORARI—June 25, 1962

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted, and the case is transferred to the summary calendar. The case is set for argument to follow No. 638.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this petition.

[fol. 45]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 66

JAMES GOBER, et al., Petitioners,

v.

CITY OF BIRMINGHAM, Respondent.

STIPULATION AS TO PRINTING OF THE RECORD—Filed July 17, 1962

The parties to the above-entitled cause hereby stipulate that the following parts of the record should be printed by

---

the Clerk of the Supreme Court and the following notations as to identical items may be noted by the Clerk to avoid unnecessary duplication in printing:

1. Print the entire record of the proceedings in the Alabama courts in the case of *James Gober v. City of Birmingham*.

2. It is hereby stipulated between the parties that the Clerk may cause the following notations to be printed in appropriate places in printing the record in the *Gober* case:

a. The appeal bond in the Circuit Court printed in the *Gober* case is identical to the appeal bonds in the cases of the other 9 petitioners except for the names and addresses of the petitioners involved.

b. The appeal bond to the Alabama Court of Appeals, printed in the *Gober* case, is identical to the appeal bonds in the cases of the other 9 petitioners except for the names and addresses of the petitioners.

[fol. 46] c. The transcript of the sentencing of the petitioners as printed in the *Gober* record, pp. 50-52 (note that in this portion of the *Gober* record some pages are not numbered), appears in identical form in each of the 10 cases.

d. The application for rehearing in the Alabama Court of Appeals and that Court's order overruling the application in the *Gober* record, p. 66, is identical to the similar applications and orders filed in the other 9 cases except for the captions.

e. The unnumbered page following page 75 in the *Gober* record which lists the proceedings in the Supreme Court of Alabama on the petition for certiorari and gives the dates of rulings, etc., is identical to the corresponding page in the records pertaining to the other 9 petitioners except for the captions.

f. The order of the Supreme Court of Alabama denying the writ of certiorari in the *Gober* record, p. 72, is identical to those in the records pertaining to the other 9 petitioners except for the captions.

g. The application for rehearing of the denial of the writ of certiorari, printed in the *Gober* record at p. 73, is identical to that appearing in the records pertaining to the other 9 petitioners except for the captions.

h. The order of the Supreme Court of Alabama overruling the application for rehearing in the *Gober* record at p. 74 is identical to the corresponding orders in the records pertaining to the other 9 petitioners except for the captions.

3. Print the entire record of the proceedings in the Alabama courts in the case of *James Albert Davis* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

[fol. 47] b. The transcript of the trial in the *Davis* case, pp. 16 through 30 may be omitted. (The Clerk will please print a notation to the effect that the parties stipulate that the trial transcript in the *Davis* case is identical to that in the *Gober* case.)

4. Print the entire record of the proceedings in the Alabama courts in the case of *Roy Hutchinson v. City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

5. Print the entire record of the proceedings in the Alabama courts in the case of *Robert J. King* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

b. The trial transcript, pp. 16 through 33. (The Clerk will please print a notation to the effect that the parties stipulate that the trial transcript in the *King* case is identical to that in the *Hutchinson* case.)

c. The petition for a writ of certiorari filed in the Supreme Court of Alabama may be omitted. (The Clerk will please print a notation to the effect that the parties stipulate that the petition filed in the Alabama Supreme Court

in the *King* case is identical to that filed in the *Hutchinson* case.)

6. Print the entire record of the proceedings in the Alabama courts in the case of *Robert Parker* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

7. Print the entire record of the proceedings in the Alabama courts in the case of *William West* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

b. The trial transcript in the *West* case, pp. 13 through [fol. 48] 32, may be omitted. (The Clerk will please print a notation to the effect that the parties stipulate that the transcript of the trial proceedings in the *West* case is identical to the transcript in the *Parker* case.)

c. The petition for a writ of certiorari filed in the Supreme Court of Alabama may be omitted. (The Clerk will please print a notation that the parties stipulate that the petition filed in the Alabama Supreme Court in the *West* case is identical to that filed in the *Parker* case.)

8. Print the entire record of the proceedings in the Alabama courts in the case of *Robert D. Sanders* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

9. Print the entire record of the proceedings in the Alabama courts in the case of *Roosevelt Westmoreland* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

b. The trial transcript, pp. 13 through 24, may be omitted. (The Clerk will please print a notation that the parties stipulate that the trial transcript in the *Westmoreland* case is identical to that in the *Sanders* case.)

c. The petition for a writ of certiorari filed in the Supreme Court of Alabama may be omitted. (The Clerk will please make a notation that the parties stipulate that the petition filed in the Alabama Supreme Court in the *Westmoreland* case is identical to that filed in the *Sanders* case.)

10. Print the entire record of the proceedings in the Alabama courts in the case of *Jessie Walker* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

[fol. 49] 11. Print the entire record of the proceedings in the Alabama courts in the case of *Willie J. Willis* v. *City of Birmingham*, except that the following items may be omitted:

a. The items listed in paragraph 2a through 2h above.

b. The trial transcript, pp. 13 through 24, may be omitted. (The Clerk will please print a notation to the effect that the parties stipulate that the trial transcript in the *Willis* case is identical to that in the *Walker* case.)

c. The petition for a writ of certiorari filed in the Supreme Court of Alabama may be omitted. (The Clerk will please make a notation that the parties stipulate that the petition filed in the Alabama Supreme Court in the *Willis* case is identical to that filed in the *Walker* case.)

12. Print this stipulation.

Jack Greenberg, James M. Nabrit, III, Attorneys for Petitioners.

Watts E. Davis, Earl McBee, Attorneys for Respondents.

of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said William West, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 6] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said William West, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty-two and 10/100 ($52.10) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-eight and 10/100 ($48.10) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-four days, at the rate of 75¢ per day to pay said costs. It is therefore ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion

coming on to be heard and determined by the Court it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 7]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20797

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

WILLIAM WEST, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The Court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of violating the laws of ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied [fol. 8] to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on private property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall
Attorneys for Defendant.

[fol. 9]

ORDER OVERRULING

The foregoing Motion being presented in open Court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

Appeal Bond to Court of Appeals (omitted in printing).

[fol. 11] Transcript of Evidence—October 10, 1960 (omitted in printing).

Counsel's Note Re Record

The parties stipulate that the transcript of the trial proceedings in the *West* case is identical to the transcript in the *Parker* case.

[fol. 33] Transcript of Sentencing (omitted in printing).

[fol. 38] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 40]

In the Court of Appeals of Alabama

No. .....

William West, Appellant,

vs.

The City of Birmingham, Appellee.

Assignment of Errors

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in over-ruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions. (Tr. 2, 3, 5 & 13).

2. The Court erred in over-ruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4, 5 & 13).

3. The Court erred in over-ruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5 & 25).

4. The Court erred in over-ruling Appellant's Motion for a New Trial. (Tr. 6, 7, 9 & 37).

5. The Court erred in refusing to permit the witness, Lloyd L. Stalling, Assistant Store Manager of J. J. Newberry Company, to testify as to the racial policies of aforesaid Company, in service of persons of different races to which ruling the defendant took exceptions. (Tr. 22 & 24).

Oscar W. Adam, Jr., Arthur D. Shores, J. Richmond Pearson, Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 41]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 804

WILLIAM WEST,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham; 6th Division 797; Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 42] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 42a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 43] Petition for Certiorari (omitted in printing).

COUNSEL'S NOTE RE RECORD

The parties stipulate that the petition filed in the Alabama Supreme Court in the *West* case is identical to that filed in the *Parker* case.

[fol. 46] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 47] Application for Rehearing (omitting in printing).

[fol. 48] Order Overruling Application for Rehearing (omitted in printing).

[fol. 49] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
IN AND FOR JEFFERSON COUNTY

No. 20787

CITY OF BIRMINGHAM,

vs.

ROBERT D. SANDERS.

APPEAL BOND (omitted in printing).

[fol. 2]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20787

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT D. SANDERS, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation and complains that Robert D. Sanders, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as S. H. Kress & Co. 1900 3rd Avenue, North, Birmingham, Alabama, after being warned

not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20787

CITY OF BIRMINGHAM,

vs.

ROBERT D. SANDERS.

MOTION TO STRIKE—Filed October 11, 1960

Comes now Robert D. Sanders, defendant in this case, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by [fol. 3] the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities guaranteed defendant, as a citi-

zen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20787

CITY OF BIRMINGHAM,

vs.

ROBERT D. SANDERS.

DEMURRERS—Filed October 10, 1960

Comes now Robert D. Sanders, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

[fol. 4] 2. That the complaint, affidavit or information upon which this cause is based is insufficient to support

prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20787

CITY OF BIRMINGHAM, Plaintiff,

versus

ROBERT D. SANDERS, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Kress, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendant from Kress' Eating Facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Kress, an establishment performing an economic function invested with the public interest;

that defendant peacefully was attempting to obtain service in the facilities of Kress in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Birmingham, Alabama, to permit defendant, a Negro, and [fol. 6] other members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Kress, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in furtherance of this racially discriminatory practice of Kress, defendant was arrested on the basis of race or color, under color of law, to enforce racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a

Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: Kress and from [fol. 7] which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Kress, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempting to use a facility, Kress, open to the public, which was denied to him solely because of race or color; that ....., was and is offering, for a price, to serve all members of the public with food; that this public facility Kress, is,

along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if ..... and other like facilities were all to withdraw said service; that having determined to offer said valuable service to the public, Kress is required to provide such service in the manner of state operated facilities of a like nature, to-wit: That Kress may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, J. Richmond Pearson, Peter A Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

ROBERT D. SANDERS.

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said

Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert D. Sanders, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 9] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Robert D. Sanders, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-eight and 75/100 ($48.75) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-four and 75/100 ($44.75) dollars for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20787

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROBERT D. SANDERS, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had an obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The Court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under [fol. 11] which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without

first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on private property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Attorneys for Defendant.

[fol. 12]

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

APPEAL BOND TO COURT OF APPEALS (omitted in printing).

[File endorsement omitted]

[fol. 14]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
IN AND FOR JEFFERSON COUNTY

No. 20787

THE CITY OF BIRMINGHAM, a Municipal Corporation,

versus

ROBERT D. SANDERS.

Birmingham, Alabama

Transcript of Evidence—October 10, 1960

BEFORE: Honorable George L. Bailes, Judge.

APPEARANCES:

For the City, Mr. Watts E. Davis.

For the Defendant, Messrs. A. D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson.

[fol. 16]

PROCEEDINGS

Mr. Davis: Mr. Caldwell.

J. P. CALDWELL, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state your full name?
A. J. P. Caldwell.
Q. By whom are you employed?
A. City of Birmingham.

Q. Were you so employed on March 31, 1960?

A. Yes, sir.

Q. I will ask you if you had orders or received a call to go to the Kress 5 and 10c Store on the morning of March 31, 1960?

A. Yes, sir.

Q. When you arrived there did you go near the eating area or luncheonette area?

A. In the basement, yes, sir.

Q. What did you observe, if anything unusual on that occasion there?

A. Officer Thompson and I went downstairs in the basement. The lunchroom was closed. The lights were out. We observed two black males Roosevelt Westmoreland and Robert D. Sanders sitting there.

Q. Did you on that occasion put the two boys under arrest?

A. Yes, sir.

Q. Do you see those two boys in the Courtroom?

A. Yes, sir.

Q. Are they the defendants sitting between counsel here at my right?

A. Yes, sir.

Q. Was any statement made by any person employed [fol. 17] by Kress' in the presence and hearing of these two defendants that morning?

A. There was by Mr. Braswell.

Q. Who is he?

A. He is Manager of the lunch counter, Kress' lunch counter, and there was another gentleman in his presence also. I didn't get his name.

Q. What, if anything, did you hear Mr. Braswell say to the two defendants on this occasion?

A. Mr. Braswell told us in the presence of the defendants here that they couldn't be served and he had turned the lights out and closed the counter.

Q. You then put them under arrest?

A. Yes, sir.

Q. Was this in the City of Birmingham?

A. Yes, sir.

Q. Second Avenue between 19th and 20th Street.

A. Third Avenue.

Q. That is on the corner of Third Avenue and 19th Street North?

A. Yes, sir.

Mr. Davis: That is all. Thank you.

Cross examination.

By Mr. Hall:

Q. Officer Caldwell, did Mr. Braswell tell the defendants to leave the lunch counter?

A. He told them they couldn't be served, that the counter was closed.

Q. Did he tell them to leave the lunch counter?

A. I don't know whether he did or not.

Q. You didn't hear him say that?

A. No, I didn't.

Q. Did he ask you to arrest them?

A. No, he didn't.

Q. Did anyone in Kress' ask you to put them under arrest?

[fol. 18] A. No, they didn't.

Q. Did you hear anyone at Kress' ask them to leave the lunch counter?

A. No, I didn't.

Mr. Hall: That is all.

Mr. Davis: Mr. Pearson.

Albert J. Pearson, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you state to the Court your full name?

A. Albert J. Pearson.

Q. Are you employed by S. H. Kress & Company?

A. Yes, sir.

Q. Were you employed on March 31, of this year?

A. Yes.

Q. In what capacity were you employed then Mr. Pearson?

A. Steward or Manager.

Q. Are your services concerned directly with the lunch counter or the eating counter?

A. Yes, sir.

Q. Do your duties involve over-all supervision of the counter, purchasing and personnel problems and so forth?

A. Yes, sir.

Q. Would you say that was equivalent to being Manager in that department?

A. Yes, sir.

Q. On the morning of March 31, of this year did you have occasion to observe two colored boys present in the eating area?

A. Yes, sir.

Q. Were they seated?

A. Yes, sir.

[fol. 19] Q. Did you have any conversation with either or both of these boys?

A. Yes, sir.

Q. What was that conversation, Mr. Pearson?

A. I approached them from the inside of the bay that they were sitting and informed the boys that the bay was closed and I put up a closed sign and told them we couldn't serve them and they would have to leave.

Q. When you say bay, is the counter shaped in a series of arcs or different sections?

A. Yes, sir.

Q. When you say bay you are speaking of one section?

A. One section.

Q. You say you turned off the light in the bay in which they were sitting?

A. Yes, sir.

Q. What did they do after the light was turned off and you heard the first conversation with them?

A. After placing the closed signs in that bay I went to the back and cut the light out and as I came back out the boys had moved from that bay and sat down in bay number two.

Q. What did you do at that time?

A. I approached them again and said, "Boys you will have to leave because I can't serve you and the bay is closed. We are closing." And I proceeded as I told them that I was putting up closed signs on that bay.

Q. What did they do after that conversation?

A. Which one it was as I turned I don't remember but one of the boys said, "Well, we have our rights." And with that I proceeded to call the Manager of the store.

Q. Did he have any conversation, the Manager, with these boys in your presence?

A. When he came down the lunch department is in the basement, when he came down and approached the counter, [fol. 20] he asked me had I asked them to leave.

Q. Did he say anything to these two boys?

A. Yes, sir.

Q. What was it?

Mr. Billingsley: I am going to object to that as purely hearsay.

Mr. Davis: I am talking about a statement made in this man's presence to the two defendants. What was the statement Mr. Braswell made to these two boys in your presence?

A. He asked them to leave the store.

Q. Did they respond in any way?

A. No, sir.

Q. Did the police ultimately come and place the boys under arrest?

A. As I turned around, the Manager and I turned around to walk away from the boys, the police came in and asked them to get up and I think the first time they asked them that they still didn't get up and then they told the boys to please get up and with that three or four more policemen come between us and the two officers who approached the boys and they carried them out of the store.

Q. When you say carried you mean lifted them up?

A. No, escorted them out. I am sorry.

Mr. Davis: That is all.

Cross examination.

By Mr. Hall:

Q. Mr. Braswell is the General Manager of the Kress Store?

A. That is right.

Q. And you had told the boys to leave?

A. Yes, sir.

Q. Did you mean to leave the store?

A. To leave the area. The lunch department is enclosed in a railing, they would have to leave that section.

[fol. 21] Q. To leave that section yes. Not the store?

A. The store was not mentioned.

Q. How many bays are there in the lunch facilities?

A. Four.

Q. Did you close all of the bays?

A. Yes, sir.

Q. You closed the entire lunchroom area?

A. After the boys moved to the second bay and I closed the lights for that bay and I also closed down the other three bays.

Q. And this was because they would not leave, is that why you closed the lunchroom area?

A. I closed on orders of the Manager.

Q. You had already talked with the Manager?

A. That is right.

Q. Did you call the police?

A. I personally, no.

Q. Did Mr. Braswell call them in your presence?

A. Not in my presence.

Q. Did you ask the police to arrest these boys?

A. Not personally.

Q. Did Mr. Braswell request it in your presence?

A. Not in my presence.

Q. Did you sign a complaint or affidavit against these boys down at the Police Department?

A. No.

Q. You have not signed one at all?

A. No.

Q. Do you know if Mr. Braswell signed one?

A. I can't answer that truthfully, I don't know.

Q. Did Mr. Braswell sign one on the occasion in your presence?

A. In my presence, nothing was signed.

Q. So far as you know he has not signed one since or requested arrest?

A. Whether he signed or hasn't signed I couldn't tell you.

[fol. 22] Q. You don't know?

A. No.

Q. Is Mr. Braswell here today?

A. In the Courtroom?

Q. In the Courtroom?

A. No.

Q. Is he here as a witness?

A. I can't answer that.

Q. You haven't seen him here?

A. Not in the Courtroom.

Q. Did you testify in the previous hearing in the City Court?

A. No—for this case?

Q. Yes.

A. No.

Q. This is the first time that you have testified?

A. Yes.

Q. Are you still employed by Kress'?

A. Yes.

Q. In the same capacity?

A. Yes.

Q. Tell us is the Kress store a general department store selling merchandise to the buying public?

A. Yes.

Q. Do they advertise in local newspapers and other media?

A. They do some advertising. To what extent I don't really keep up with.

Q. The advertising you have seen some advertising?

A. For Kress' yes.

Q. Is that advertising beamed to the general buying public?

A. I would assume so.

Q. Does it request or invite persons to come into Kress' Store and buy merchandise?

[fol. 23] A. I wouldn't say it invites. It advertises that the merchandise is there for sale.

Q. You wouldn't say that that is an invitation to come to buy?

A. Well that is a fine point if I might quote an opinion as to inviting somebody.

Q. The whole purpose is to invite the buying public to come in and buy?

A. I would assume so.

Q. You understand that to be the case?

Mr. Davis: We object to that.

Mr. Hall: We withdraw the question.

Q. As Manager of the lunch counter have you had any advertising in the local newspapers with reference to what you have to sell?

A. About three ads in nine years.

Q. About three ads in nine years. Do you recall those ads? Do you recall generally? They advertised food or sundries of some type for sale at Kress' luncheonette?

A. That is right.

Q. Advertisements placed in the local newspapers is that so?

A. Yes.

Q. Do you have any facilities in your store for colored customers alone?

A. No.

Q. Is your lunch facilities at Kress for the customers who come in Kress'?

A. Yes.

Q. When you advertise do you advertise for white customers to come in and buy sundries and food or just advertise generally?

A. We advertise generally.

Q. You don't specifically, don't specify whether it is white or colored?

A. No.

[fol. 24] Q. Well now does Kress have white and colored customers ordinarily, not in the lunchroom but generally?

A. Yes.

Q. Do you observe colored and white persons at the candy counters in Kress' buying candy?

A. Yes.

Q. Do they buy from the same counter?

A. Yes.

Q. And they buy generally at the other departments, at the notions. Is that right?

A. Well that is placing me in a lot of departments in the store out of my own. When I walk through the store they are purchasing. Whether I stop and see that they make the actual purchases, I don't.

Q. But you have seen colored and white customers trading at Kress' together?

A. Yes.

Q. For how many years have you worked for the local Kress Store?

A. Nine years.

Q. And during that nine-year period you have seen white and colored customers trading together at Kress' Store?

A. That is right.

Q. And you do advertise in the local newspaper at least three or four times a year you say?

A. No, about three times in nine years.

Q. When you do advertise you advertise your luncheonette or your business?

A. No, the last time I just advertised apple pies at the bakery counter.

Q. Apple pies at the bakery counter. Have you advertised malted milks for 15¢ on some occasion?

A. Just on the opening day.

Q. When you do there is no racial tag on it?

[fol. 25] A. No.

Q. It is beamed to the general buying public?

A. Right.

Q. Have you had occasion to close down your luncheon facilities before?

A. Yes.

Q. This was not the first time you did it?

A. No.

Q. On this occasion you closed them down immediately after you observed the two boys sitting at the counter, is that true?

A. That is right. I didn't close it until after I told them they couldn't be served and then I closed.

Q. You asked them to leave?

A. Right.

Q. They would not leave and so then you closed the facilities?

A. Right.

Q. How long did they stay there before the police came?

A. Well I closed down one section and as I was walking back from the dish room to the last lunch area I observed them having moved from one bay to the second bay and I again approached the boys and told them we had closed, we couldn't serve them and they would have to leave and I went back to cut out the lights not only for the second bay but all of the other bays.

Q. How long did they stay there then?

A. Until the police arrived.

Q. Do you have an opinion as to the length of time?

A. No because my kitchen was calling me for preparation of food and it was between fifteen and twenty-five minutes I guess. Time with me escapes.

Q. Just prior to closing your counter were there other persons seated there?

A. At that particular counter?

Q. Within the rail at the closed facility?

[fol. 26] A. I would say between three and five people in the whole department.

Q. And when the boys sat down there were other persons there before you closed up, is that true?

A. They were eating, yes, sir, or having coffee.

Q. Did everyone leave when you closed except these two boys?

A. Everyone I think except for an elderly woman who finished her sandwich and left.

Q. Was she sitting there when the police came?

A. I don't recall whether she was sitting or walking out.

Q. But she did remain after you closed the facilities?

A. Yes.

Q. Was she arrested?

A. I couldn't answer that. I don't know.

Q. So far as you know she was not, is that true?

A. As far as I know she was not. I don't know whether she was.

Q. You haven't been called upon to bear witness against her, have you?

A. No.

Q. Is there a luncheonette on the first floor?

A. I beg your pardon?

Q. Is there a luncheonette on the first floor?

A. No.

Q. The entire facilities is in the basement?

A. Right.

Q. At the bakery counter you do serve colored persons, is that true?

A. Yes, to take out.

Q. Do you have charge also of the candy?

A. No.

Q. Have you had occasion to sell colored persons any food at all at the luncheon counter to carry out?

A. We have a carry-out service.

[fol. 27] Q. You have a carry-out service?

A. Sure, a delivery boy.

Q. Assume that some colored person would come in and purchase to carry out food, do you solicit that?

A. Yes, to carry out.

Q. To carry out?

A. Yes.

Q. But you do not sell colored persons to sit and eat is that true?

A. No.

Mr. Hall: That is all.

Mr. Davis: That is all.

[fol. 28] Transcript of Sentencing (omitted in printing).

[fol. 33] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 35]

IN THE COURT OF APPEALS OF ALABAMA

ROBERT D. SANDERS, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the appellant took exceptions. (Tr. 2, 3 & 8)

2. The Court erred in overruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4 & 8)

3. The Court erred in overruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5, 7 & 8)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10 & 12)

Arthur D. Shores, Peter A. Hall, Orzelf Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 36]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 801

ROBERT D. SANDERS,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 37] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 37a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 38]

IN THE SUPREME COURT OF ALABAMA

No. 755 Sixth Division

EX PARTE: ROBERT D. SANDERS

ROBERT D. SANDERS, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 3, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein Robert D. Sanders was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in Support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Section 1436 of the General City Code of Birmingham, viz:

> "Any person who enters into the dwelling house or goes or remains on the premises of another, after being

warned not to do so, shall on conviction, be punished as provided in Section 4, provided that this section shall not apply to police officers in discharge of official duties."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of prose-
[fol. 39] cution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty of Trespass after Warning; and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Thirty (30) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto Your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause upon the opinion judgment rendered in the case of James Gober vs. City of Birmingham, Sixth Division—797, decided May 30, 1961, which case had a different factual situation from petitioner's case; and there was a different proposition of law involved in petitioner's case, not involved in case of Gober v. City of Birmingham.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

B. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.

C. That to warrant a conviction, the evidence must identify the accused, as the person who committed the crime.

[fol. 40] The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities, equal protection of the law, and a violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises, as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, By Arthur D. Shores, Attorneys for Appellant.

[fol. 41] *Duly sworn to by Arthur D. Shores, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 42] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 43] Application for Rehearing (omitted in printing).

[fol. 44] Order Overruling Application for Rehearing (omitted in printing).

[fol. 45] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20792

THE CITY OF BIRMINGHAM,

vs.

ROOSEVELT WESTMORELAND.

APPEAL BOND (omitted in printing)

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20792

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

ROOSEVELT WESTMORELAND, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation and complains that Roosevelt Westmoreland, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as S. H. Kress & Co., 1900 3rd Avenue, North, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20792

CITY OF BIRMINGHAM,

vs.

ROOSEVELT WEST MORELAND.

MOTION TO STRIKE—Filed October 10, 1960

Comes now Roosevelt West Moreland, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United [fol. 3] States, constitutes an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities, guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citi-

zen of the United States, constitutes a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20792

CITY OF BIRMINGHAM,

vs.

ROOSEVELT WEST MORELAND.

DEMURRERS—Filed October 10, 1960

Comes now Roosevelt West Moreland, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any [fol. 4] offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this deefndant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that it is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

CITY OF BIRMINGHAM,

vs.

ROOSEVELT WESTMORELAND.

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

JUDGMENT ENTRY—October 10, 1960

This the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine

of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Roosevelt Westmoreland, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered [fol. 6] and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Roosevelt Westmoreland, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty-two 55/100 ($52.55) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-eight and 55/100 ($48.55) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-five days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 7]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20792

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

versus

ROOSEVELT WEST MORELAND, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The Court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to [fol. 8] this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birming-

ham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on private property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Bill-
[fol. 9] ingsley, Jr., J. Richmond Pearson, Peter
A. Hall, Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open Court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

Appeal Bond to Court of Appeals (omitted in printing).

[fol. 11] Transcript of Evidence—October 10, 1960 (omitted in printing).

Counsel's Note Re Record

The parties stipulate that the trial transcript in the *Westmoreland* case is identical to that in the *Sanders* case.

[fol. 25] Transcript of Sentencing (omitted in printing).

[fol. 30] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 32]

In the Court of Appeals of Alabama

Roosevelt Westmoreland, Appellant,

vs.

The City of Birmingham, Appellee.

Assignment of Errors

The Appellant says that there is manifest error in the foregoing Transcript of the Record of the proceedings, had and done in the Honorable Circuit Court of Jefferson County, Alabama; to the hurt and prejudice of this appellant, and for error, assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike the Complaint filed in this cause, to which ruling the Appellant took exceptions (Tr. 2, 3 & 8)

2. The Court erred in overruling the Appellant's Demurrers filed in this cause, to which the Appellant took exceptions. (Tr. 3, 4 & 8)

3. The Court erred in overruling the Appellant's Motion to Exclude the Evidence filed in this cause, to which ruling Appellant took exceptions. (Tr. 5, 7 & 8).

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10 & 12)

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 33]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 805

ROOSEVELT WESTMORELAND,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960
Certificate Filed

January 30, 1961
Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Gober v. City of Birmingham, 6th Division 797, Ala. App. Ms. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 34] Application for Rehearing and Order Overruling (omitted in printing).

[fol. 34a] Proceedings on Petition for Certiorari (omitted in printing).

[fol. 35]

PETITION FOR CERTIORARI (omitted in printing).

COUNSEL'S NOTE RE RECORD

The parties stipulate that the petition filed in the Alabama Supreme Court in the *Westmoreland* case is identical to that filed in the *Sanders* case.

[fol. 38] Order Denying Petition for Writ of Certiorari (omitted in printing).

[fol. 39] Application for Rehearing (omitted in printing).

[fol. 40] Order Overruling Application for Rehearing (omitted in printing).

[fol. 41] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 20790

THE CITY OF BIRMINGHAM;

vs.

JESSIE WALKER.

Appeal Bond (omitted in printing).

[fol. 2] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20790

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JESSIE WALKER, Defendant.

COMPLAINT—Filed October 10, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Jessie Walker, within twelve months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did go or remain on the premises of another, said premises being the area used for eating, drinking, and dining purposes and located within the building commonly and customarily known as F. W. Woolworth Co., 219 North 19th Street, Birmingham, Alabama, after being warned not to do so, contrary to and in violation of Section 1436 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20790

CITY OF BIRMINGHAM,

vs.

JESSE WALKER.

MOTION TO STRIKE—Filed October 10, 1960.

Comes now Jesse Walker, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinance or statute upon which is founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitutes an abridgment of the freedom of as- [fol. 3] sembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinance or statute which is the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitutes an abridgment of privileges and immunities, guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Section 824 of the General City Code of the City of Birmingham, as applied to this defendant, a Negro citizen of the United States, constitutes a denial of due process

and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, J. Richmond Pearson, Peter A. Hall, Oscar W. Adams, Jr., Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20790

CITY OF BIRMINGHAM,

vs.

JESSE WALKER.

DEMURRERS—Filed October 10, 1960

Comes now Jesse Walker, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any [fol. 4] offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinance, Section 1436 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, is invalid in that it violates Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinance as applied to defendant, is unconstitutional on its face in that if is so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitutes an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinance, as applied to defendant, constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richard Pearson, Peter A. Hall, Oscar W. Adams, Jr., Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20790

CITY OF BIRMINGHAM, Plaintiff,

versus

JESSE WALKER, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 10, 1960

1. The complaint charging defendant, a Negro, with violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain after told to leave is invalid in that the evidence establishes merely that defendant was peacefully upon the premises of Woolworth Eating Facilities, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude defendants from Woolworth's Eating Facilities because of his race or color; defendant, at the same time is excluded from equal service at the preponderant number of other similar eating establishments in Birmingham, Alabama; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the 14th Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter establishes that he was, at the time of arrest and at all times covered by the charge, in peaceful exercise of constitutional rights to assemble with others for the purpose of speaking and protesting against the practice, custom and usage of racial discrimination in Woolworth's Eating Fa-

cilities, an establishment performing an economic function invested with the public interest; that defendant peacefully was attempting to obtain service in the facilities of Woolworth's Eating Facilities in the manner of white persons similarly situated, and at no time was defendant defiant or in breach of the peace and was at all times upon an area essentially public, wherefore defendant has been denied rights secured by the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

3. The evidence establishes that prosecution of defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking and otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Bir- [fol. 6] mingham, Alabama to permit defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States.

4. The evidence against defendant, a Negro, in support of the complaint charging him with violation of trespass upon land after being forbidden to enter clearly indicates that defendant at the time of his arrest, had accepted an invitation to enter and purchase articles in Woolworth's Eating Facilities, a store open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of defendant's race or color; and, that in furtherance of this racially discriminatory practice of Woolworth's Eating Facilities, defendant was arrested on the basis of race or color, under color of law, to enforce Woolworth's Eating Facilities racially discriminatory policy, thereby violating defendant's rights under the equal protection and due process

clauses of the 14th Amendment of the United States Constitution.

5. The statute or ordinance (1436 of the General City Code of Birmingham of 1944) under which defendant, a Negro, was arrested and charged is unconstitutional on its face by making it a crime to be on public property after being asked to leave by an individual at such individual's whim, in that said statute does not require that the person making the demand to leave present documents or other evidence of possessory right sufficient to apprise defendant of the validity of the demand to leave, all of which renders the statute so vague and uncertain as applied to defendant as to violate his rights under the due process clause of the 14th Amendment of the United States Constitution.

6. Section 1436 of the General City Code of Birmingham of 1944 under which defendant, a Negro, was arrested and charged with violation of trespass upon land after being forbidden to enter is on the evidence unconstitutional as applied to defendant in that it makes it a crime to be on property open to the public after being asked to leave, because of race or color, in violation of defendant's rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

[fol. 7] 7. The evidence against defendant, a Negro, establishes that he, at the time of arrest and all times covered by the complaint, was a member of the public, peaceably attempting to use a publicly owned facility, to-wit: Woolworth's Eating Facilities and from which defendant was barred because of his race or color; that such denial was in accordance with a policy, custom and usage of Woolworth's Eating Facilities, of operating such facilities and services on a racially segregated basis, which policy, custom and usage violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

8. The evidence offered against the defendant, a Negro, establishes that at the time of arrest and all times covered by the complaint he was a member of the public, attempt-

ing to use a facility, Woolworth's Eating Facilities, open to the public, which was denied to him solely because of race or color; that Woolworth's eating facilities, was and is offering, for a price, to serve all members of the public with food; that this public facility, Woolworth's Eating Facilities is, along with others of a similar nature, performing a necessary service for the public, which in fact, would have to be provided by the state if Woolworth's Eating Facilities and other like facilities were all to withdraw said service; that having determined to offer said valuable service to the public, Woolworth's Eating Facilities is required to provide such service in the manner of state operated facilities of a like nature, to-wit: That Woolworth's Eating Facilities may not segregate or exclude defendant on the ground of race or color, in violation of the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Attorneys for Defendant.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court

(Trespass After Warning)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

JESSIE WALKER.

JUDGMENT ENTRY—October 10, 1960

T the 10th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came

the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and on this the 11th day of October, 1960, the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Jessie Walker, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the [fol. 9] Law, that the defendant, the said Jessie Walker, perform additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to fifty and 85/100 ($50.85) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-six and 85/100 ($46.85) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixty-three days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham, has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And on this the 11th day of October, 1960, the defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 10]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF ALABAMA

No. 20790

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

JESSIE WALKER, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said motion sets out and assigns the following, separately and severally:

1. That the judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in overruling objections, by the defendant to the introduction of evidence offered on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. The Court erred in overruling defendant's demurrers filed in this cause.

11. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

12. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, [fol. 11] Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

14. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

15. The Court erred in overruling defendant's Motion to exclude the evidence in this cause.

16. That it appeared from the evidence that no owner of the premises involved had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

17. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

18. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against the defendant for trespass on private property.

19. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Oscar W. Adams, Jr., Arthur D. Shores, Orzell Billingsley, Jr., J. Richmond Pearson, Peter A. Hall, Attorneys for Defendant.

[fol. 12]

ORDER OVERRULING

The foregoing Motion being presented in open court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

Appeal Bond to the Court of Appeals of Alabama (omitted in printing).

[fol. 14]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

IN AND FOR JEFFERSON COUNTY

No. 20790

THE CITY OF BIRMINGHAM, a Municipal Corporation,

versus

JESSE WALKER.

Birmingham, Alabama

Transcript of Evidence—October 10, 1960

BEFORE: Honorable George L. Bailes, Judge.

APPEARANCES:

For the City, Mr. Watts E. Davis.

For the Defendant, Messrs. A. D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson.

[fol. 16] *Proceedings*

Mr. Davis: If Your Honor pleases, these are two cases that took place at Woolworth's on the same date we had in the Davis and Gober cases.

Mr. Shores: Your Honor, we propose to file demurrers and motions to strike in these two cases and I guess the ruling will be the same and you will give us an exception.

Mr. Davis: If Your Honor pleases, that is agreeable with counsel.

Mr. Adams: Just a minute, Mr. Davis.

(Counsels confer)

Mr. Davis: Mr. Casey will you take the stand.

RICHARD C. CASEY, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you please state your full name?
A. Richard C. Casey.
Q. Mr. Casey, are you employed as a police officer with the City of Birmingham?
A. Yes, sir, I am.
Q. Were you so employed on March 31, 1960?
A. Yes, sir.
Q. On the morning of March 31, 1960 at or about 10:45 a.m., did you have occasion to go to the Woolworth's store?
A. Yes, sir, I did.
Q. Is that in the City of Birmingham?
A. Yes, sir.
Q. What part of the store did you go to?
A. I went to the lunch counter on the first floor.
Q. Did you observe anything unusual or out of the ordinary on that occasion?
A. Yes, sir.
[fol. 17] Q. Tell the Court what you observed.
A. The lights were turned out over the lunch counter and there were two Negro males seated at the counter. Mrs. Evans was there waiting for the officer.
Q. Have you since learned who these two colored boys were?
A. Yes, sir.
Q. Was one of them Jesse Walker and the other Willie Willis?
A. Yes, sir.
Q. Do you see them in the Court here today?
A. Yes, sir.
Q. Can you point them out?
A. Walker and Willis, Walker to my right and Willis to my left.
Q. The two boys seated between counsel at the counsel table?
A. Yes, sir.

Q. Did you have any conversation with the boys yourself?

A. No, sir, not at that time.

Q. Was anybody else or did anybody else have any conversation with them in your presence?

A. Yes, sir.

Q. Who was that?

A. Mrs. Evans.

Q. What conversation did you hear between her and these two defendants?

A. She told the defendants that the lunch room was closed and they would have to leave.

Q. Did they leave?

A. After we placed them under arrest, yes, sir.

Mr. Davis: That is all.

Cross examination.

By Mr. Shores:

Q. Officer Evans, how did you happen to go to Woolworth's?

A. The name is Casey.

Q. Officer Casey.

[fol. 18] A. I received the call over the radio.

Q. You received the call over the radio?

A. Yes, sir.

Q. You were in a radio patrol car?

A. I was in the motor, 3-wheeled motor.

Q. From whom did you receive the call?

A. Dispatcher for the City of Birmingham Police Department.

Q. You were instructed to go to Woolworth's?

A. That is right.

Q. Whom did you first contact after you arrived at Woolworth's?

A. Mrs. Evans. We went immediately to the lunch counter where we contacted Mrs. Evans.

Q. Was there a conversation between you and Mrs. Evans?

A. No other than the fact that she did state that she

had told the boys to leave, that the place was closed, and the second time she directed her conversation to the defendants and told them it was closed and they would have to leave, she would not serve them.

Q. Was there anyone else seated at the lunch counter?

A. There was no one else there at all.

Q. Did Mrs. Evans instruct you to place the defendants under arrest?

A. No.

Q. Did anyone ever make a complaint to you from the store?

A. Other than Mrs. Evans, no.

Q. And she didn't instruct you to arrest the boys.

A. No.

Q. Did anybody instruct you to arrest them?

A. At the time?

Q. At the time.

A. No.

Q. In other words, did you take it upon yourself to make these arrests?

A. I did under authority of the City of Birmingham.

Q. What charge did you place? You say you did arrest [fol. 19] them under the authority of the City of Birmingham?

A. That is right.

Q. But not under any instructions from the store?

A. I took the complaint from Mrs. Evans that she wanted the boys out of the store, that the lunchroom was closed.

Q. In other words she stated to you that she wanted the boys out of the store?

A. She told them that they would have to leave, yes.

Q. Did she say the store?

A. The lunch counter.

Q. She didn't order them out of the store?

A. No, she said they would have to leave the lunch counter, it was closed.

Q. Do you know who Mrs. Evans is?

A. She is Manager or was Manager of the lunch counter.

Q. Do you know whether she is still employed there?

A. That I don't.

Q. What charge did you place against them when you arrested them?

A. Trespassing after warning.

Q. Did you notify them at the time that that was the charge being placed against them?

A. I did, and later on a second time at the time we placed them in the car.

Q. Did anybody from Woolworth's ever make any complaint that these boys were trespassing?

A. I couldn't say. I don't know.

Q. In other words you were not instructed by the store or anybody connected with the store to make an arrest?

Mr. Davis: If the Court pleases, we have been over this several times. I don't know whether the answer is satisfactory or not but it is repetition.

The Court: Let him answer.

A. As directly asking us to place them under arrest, no. [fol. 20] We told them they would have to come to headquarters or be contacted to sign a warrant.

Q. Did they ever sign a warrant?

A. I couldn't say that. I don't know.

Mr. Shores: That is all.

Mr. Davis: That is all. The City rests, Your Honor.

Mr. Adams: I would like to file a motion to exclude the evidence in the case of Jesse Walker and I would like to make and place a written motion in the place of oral motion and include the same grounds as in Jesse Walker's case, to exclude the evidence against Willie Willis also, and the grounds specified are the same grounds specified in the motions in the other two cases, that there is no evidence that there was any disorderly conduct involved in the defendants sitting in the eating facilities at Woolworth's. The Statute as specified is unconstitutional both by State Statutes as well as Federal Statutes in that it doesn't specify that the owner of the place or someone in charge of the place would make the warning, meaning that anybody could make the warning and the defendants would be in violation of the Statute. And it violates the defendants' constitutional right to assemble and peacefully

demonstrate for what they believe are their rights, and on the basis of the Statute and its application to the defendants I think the evidence would not justify a conviction.

The Court: Overruled.

Mr. Adams: We except.

Mr. Shores: All right, Jesse, take the stand.

JESSE H. WALKER, called as a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Shores:

Q. State you name?

A. Jesse H. Walker.

[fol. 21] Q. Jesse, on this occasion of March 31, did you go to Woolworth's store?

A. I did.

Q. For what purpose did you go?

A. I went to make a purchase of handkerchiefs and birthday gift for a friend of mine and a birthday card and while there—

Mr. Davis: We object if that is the end of the purpose.

Q. While you were there did anybody accompany you?

A. I did meet a fellow in the store bu I went to the store alone.

Q. Who did you meet in the store?

A. Willie Willis.

Q. Did Willis make a purchase?

A. He did.

Q. Where did you go after you made th purchase?

A. To the lunch counter.

Q. Did Willis accompany you to the lunch counter?

A. He did.

Q. You are a Negro, aren't you?

A. I am.

Q. Did you make any order while you were at the lunch counter, did you order anything?

A. We didn't get a chance to.